



## Division of Hotels and Restaurants Improves Operations But Not Meeting Inspection Goals

### *at a glance*

Although the Division of Hotels and Restaurants has improved its operations in recent years, it has not inspected food establishments, public lodging, and apartments as often as required by law for several years. Inspection shortfalls are due mainly to staffing cuts, changes in inspection field procedures, and problems implementing handheld computers. Because inspections gauge compliance with health and safety requirements, this problem increases risks to the public. Options for resolving this situation include increasing fees to fund additional positions, reducing the number of inspections required by administrative rule and law, and streamlining the current sanctioning process. The division also could improve its performance by increasing consumer access to its website and adopting performance measures with a stronger connection to its core mission.

### Scope

OPPAGA conducted this project in response to a legislative request to review the Department of Business and Professional Regulation's Division of Hotels and Restaurants.<sup>1</sup>

<sup>1</sup> OPPAGA has previously reviewed the division. See *Review of Hotel and Restaurant Regulation*, Report No. 96-24, December 23, 1996; and *Follow-Up Report on Hotel and Restaurant Regulation*, Report No. 98-15, October 1998.

### Background

The Division of Hotels and Restaurants regulates Florida's food and lodging industries to protect the public from unsafe and unsanitary facilities. Regulating food service establishments helps protect against foodborne illness that can be lethal to children, the elderly, and those with compromised immune systems. Regulating public lodging facilities (e.g., hotels and apartments) helps protect tourists and residents from fire and other safety hazards. Exhibit 1 shows the variety of food service and public lodging establishments regulated by the division.

#### Exhibit 1

#### The Division Regulates Several Types of Food and Lodging Establishments

Food Service	Public Lodging
<ul style="list-style-type: none"><li>• Restaurants</li><li>• Theme Park Food Carts</li><li>• Caterers</li><li>• Mobile Food Dispensing Carts and Vehicles</li><li>• Vending Machines</li><li>• Temporary Events (e.g., Seafood Festivals, Chili Cook-Offs, Ethnic Food Festivals)</li></ul>	<ul style="list-style-type: none"><li>• Hotels</li><li>• Motels</li><li>• Apartments</li><li>• Rooming Houses</li><li>• Bed And Breakfasts</li><li>• Resort Condominiums and Dwellings</li></ul>

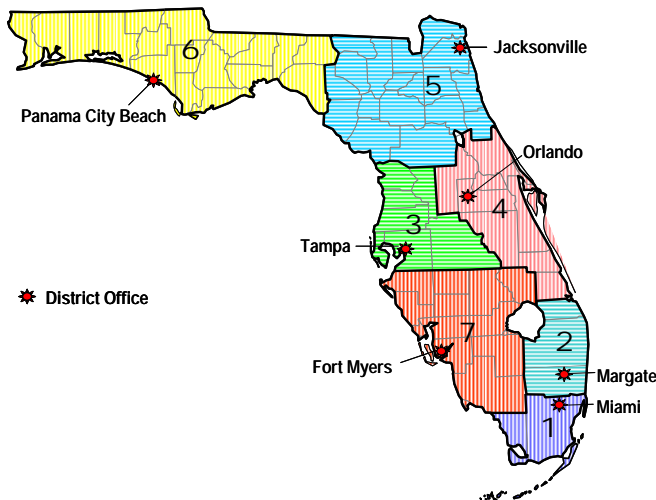
Source: The *Florida Statutes* and *Florida Administrative Code*.

To avoid duplication of effort, the division has entered into cooperative agreements with two state agencies that also regulate certain establishments that provide food services as part of a broader business function. Under these agreements, the Department of Health regulates entities that serve food in institutional settings such as hospitals, schools, and correctional facilities. The Department of Agriculture and Consumer Services regulates food processing and manufacturing plants, grocery stores with delicatessens, and establishments serving prepackaged foods.

***The division has five functional areas***

The Bureau of Sanitation and Safety Inspections inspects food and lodging establishments to ensure that they conform to health and safety standards. As shown in Exhibit 2, this bureau has seven districts that are headquartered in Miami, Margate, Fort Myers, Orlando, Tampa, Jacksonville, and Panama City Beach.

**Exhibit 2  
The Division Conducts Inspections in Seven Districts**



Source: Division of Hotels and Restaurants.

In Fiscal Year 2004-05, the bureau conducted 138,229 inspections and identified 483,462 violations. Of these, 215,643 violations were classified as critical problems that posed serious safety hazards, such as inadequate systems for sewage and wastewater, contaminated food, and inadequate fire detection systems.

The remaining 267,819 violations were classified as non-critical and included deficiencies such as failure to use hair restraints in restaurants and unclean floors, walls, and ceilings in restaurants and lodging facilities. Operators must correct most non-critical violations before the next division inspection, while critical violations must be corrected within 30 days. The division can demand immediate correction of critical violations, issue a notice of closure, and/or turn these cases over to its Office of Compliance and Licensure for further action.

The Office of Compliance and Licensure licenses food and lodging facilities and takes action against facilities found to repeatedly violate program requirements. This action may include entering into settlement agreements, which are negotiated formalized agreements between noncompliant operators and the division. These agreements typically include a corrective action plan, payment of a fine, and enrollment in the division’s Hospitality Education Program to teach the operator safe and sanitary methods of operation.

Hospitality Education seeks to bring noncompliant food and lodging operators into compliance through education. Operators typically agree to education training as part of a settlement agreement with the division.

Elevator safety monitors private inspectors that conduct elevator safety checks and responds to complaints.<sup>2</sup>

The Office of the Director oversees the program’s operations. The office also coordinates with the department’s legal staff regarding enforcement, compliance, and emergency closure of establishments that pose an immediate public health and safety threat.

<sup>2</sup> This bureau is currently being examined by the Auditor General and thus was outside the scope of OPPAGA’s review.

The division is funded by licensing fees paid by the industry. As of June 30, 2005, the division regulated 42,277 food service establishments, 36,549 lodging facilities, and 4,719 temporary permits. The division was appropriated \$15.9 million from the Hotel and Restaurant Trust Fund for Fiscal Year 2005-06. The program has 257 authorized positions, 159 of which are inspectors.

## Findings

The division has improved its inspection processes significantly since our previous reports. However, the division has not inspected food establishments, public lodging, and apartments as often as required by law, due mainly to agency-imposed staffing cuts, changes in field procedures, and ongoing problems with inspectors' handheld computers. If the division is unable to resolve this problem through planned improvements to the handheld computers and reducing the required numbers of annual inspections, industry fees may need to be raised to fund additional positions. The division also could attain some efficiencies by streamlining its enforcement processes. The division also should enhance its performance by improving consumer access to its website and establish performance measures with a stronger connection to its core mission.

### ***Inspection processes have improved significantly in recent years***

Since our 1996 and 1998 reviews, the division has improved its operations substantially by enhancing its data collection techniques and adopting federal standards. Our prior reviews noted that the division's ability to regulate food and lodging establishments was hindered by outdated information technology that prevented it from determining how frequently each establishment was inspected, which establishments were repeat violators, and how many establishments each inspector inspected per year. The division has addressed these problems through an agency-wide technology improvement program. In the course of making these improvements, it has received 30 Davis Productivity awards.

The division also has taken steps to improve inspection quality. Our earlier reviews were prompted, in part, by outbreaks of foodborne illness, rumors of "drive-by" inspections, and criticism by the U.S. Food and Drug Administration (FDA) that restaurants were not being cited for violations known to cause foodborne illness.<sup>3</sup> Since our prior review, the division has adopted the FDA Food Code, and key division employees have been certified by the FDA as food safety trainers. They are, in turn, training division inspectors. This training focuses on proper and consistent identification of violations that cause foodborne illness. Certifying these inspectors has improved inspection quality by helping ensure that inspections are done in a standardized fashion using uniform, federally endorsed procedures.

### ***Inspections are not conducted as often as required by law or rule***

Despite these improvements, the program's effectiveness is weakened because it has not conducted inspections of food and lodging establishments as often as required by state law and administrative rule. Legal requirements for inspection frequency are based on the type of facility being inspected. For example, food and lodging facilities are inspected twice a year, while resort condominiums are inspected only upon complaint. In addition, legal requirements vary between statute and administrative rule, with rule requirements generally exceeding statute (see Exhibit 3).<sup>4</sup>

<sup>3</sup> During this time, one Florida restaurant had sickened over 850 people, the largest foodborne illness outbreak in the state's history. Salmonella bacteria in chicken had cross-contaminated several other foods served at the restaurant.

<sup>4</sup> Division officials state that they have plans to amend the rule to conform to statute.

**Exhibit 3**  
**Inspection Frequency Varies by Establishment Type**

	Number of Licenses	By Statute	By Rule
<b>Food Establishments</b>			
Non-seating	5,040	2	3
Seating	34,021	2	3
Mobile Cart or Vehicle	2,747	2	3
Vending Machine	469	2	2
<b>Total</b>	<b>42,277</b>		
<b>Lodging</b>			
Hotel and Motel	4,608	2	3
Transient Rooming House /Bed and Breakfast	545	2	3
Non-Transient Rooming House	172	2	2
Apartments	20,512	1	1
Resort Dwellings and Condominiums	10,712	0	0
<b>Total</b>	<b>36,549</b>		
<b>Total, Food and Lodging</b>	<b>78,826</b>		

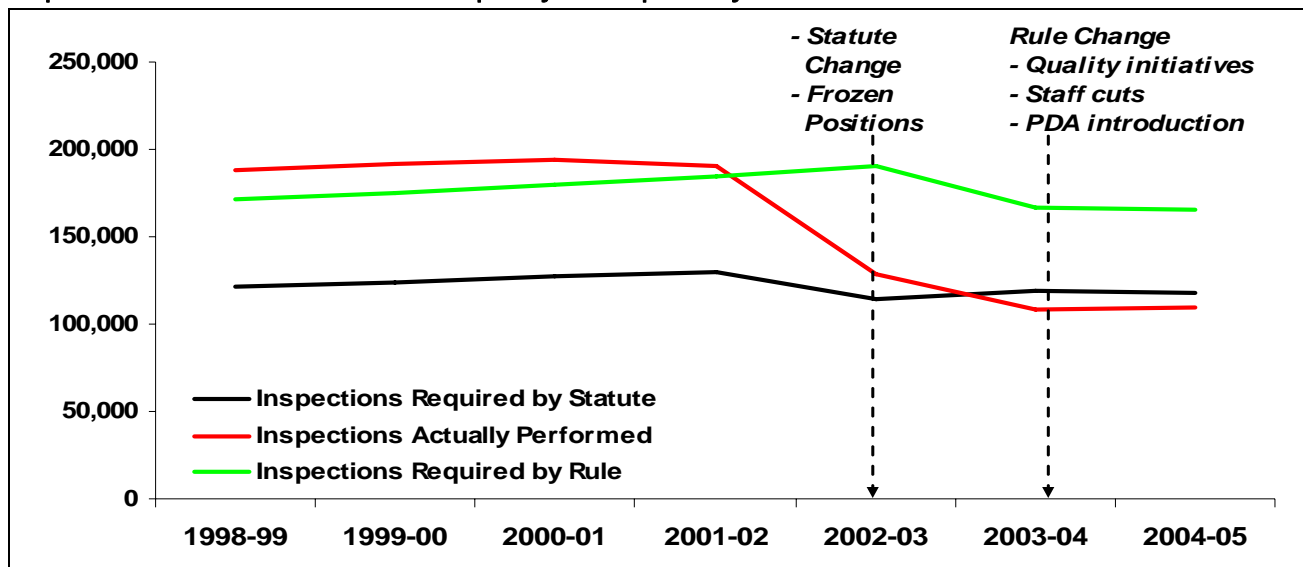
Source: The *Florida Statutes*, *Florida Administrative Code*, and Division of Hotels and Restaurants Annual Report for Fiscal Year 2004-05.

For several years, the division has not inspected food and lodging establishments as often as required by law and rule. As shown in Exhibit 4, starting in Fiscal Year 2002-03, the number of inspections completed by the division fell short of statutory requirements. In Fiscal Year 2004-05, the division conducted 55,561 fewer inspections than required by rule and 8,600 fewer than required by statute. During this same period, the division did not inspect 78% of public lodging, 68% of apartments, and 6% of food establishments as often as required by law.<sup>5, 6</sup>

<sup>5</sup> Prior to Fiscal Year 2004-05, the division’s information technology system did not capture the number of missed inspections by facility type.

<sup>6</sup> The percentages are based on the Inspection Frequency Summary Fiscal Year 2004-05 and do not include “call-back” inspections, which serve to verify operators have corrected violations, nor do they include temporary food service events.

**Exhibit 4**  
**Inspections Are Not Conducted as Frequently as Required by Law and Administrative Rule**



Notes: Statute and rule requirements are for “routine” inspections only. The numbers in the graph do not include “call-back” inspections used to verify operators corrected violations, nor does it include temporary food service events.

The decline in inspections between Fiscal Year 2001-02 and 2002-03 was the result of a statutory change effective July 1, 2002, which reduced the number of inspections required for transient and non-transient apartments. The following year, effective September 9, 2003, the division eliminated annual inspections for resort condominiums and dwellings. These facilities are now only inspected at initial licensure and if there is a request (e.g., complaints).

Source: Division of Hotels and Restaurants Annual Reports and OPPAGA analysis.

The division is not meeting its inspection mandates due to three factors:

- inspector positions were frozen and reduced to help fund an agency-wide licensing system and call center;<sup>7</sup>
- changes in field procedures, designed to enhance inspection quality, have increased the amount of time required to complete inspections; and
- ongoing problems with handheld computers, intended to improve productivity, have hindered inspectors and reduced their ability to timely complete inspections.

### **Inspector positions were reduced to help fund an agency-wide licensing system and call center**

In anticipation of staff cuts that would be needed to fund an agency-wide licensing system and call center, the division froze inspector positions and did not replace staff as they left, starting in Fiscal Year 2002-03. When the agency-wide system was implemented the following year, the department reduced division staff by 51 positions, including 21 of its 180 inspectors (a 12% reduction in inspection staff).

The department anticipated that these staffing reductions would be offset by improved efficiencies. Specifically, inspectors would no longer be required to handle as many calls from consumers lodging complaints about hotels and restaurants, which should free them to concentrate solely on inspections. While division officials report that the agency-wide system decreased the amount of time inspectors spent handling telephone inquiries, it did not increase inspector productivity as much as anticipated to offset the staffing reduction, as evidenced by the decrease in the number of inspections completed.

### **Changes in field procedures have increased the amount of time required to complete inspections**

Starting in May 2003, the division began implementing three changes in field procedures that, while increasing inspection quality, also increased the amount of time inspections

<sup>7</sup> Division officials also note that the 2004 hurricanes reduced the number of inspections conducted during Fiscal Year 2004-05 by approximately 3%, or 4,400 inspections.

required. First, it implemented a policy to allow operators to correct violations immediately once the inspector cites them. This policy helps ensure that violations are corrected but requires inspectors to spend additional time waiting to verify that corrections occur. Second, the division increased its emphasis on using inspections to educate facility operators and staff began taking more time to educate operators about the importance of compliance with sanitation and safety requirements. Last, the division began spending more time on identifying and testing critical points in the food preparation process where contamination and risk of foodborne illness are greatest.

### **Ongoing problems with handheld computers have reduced the ability to timely complete inspections**

In November 2003, as part of an initiative to increase staff efficiency and improve consumer protection, the division supplied inspectors with handheld computers—called personal digital assistants (PDAs).<sup>8</sup> According to department officials, PDAs have several advantages, including enabling inspection information to be loaded onto the agency server on a daily basis; reducing clerical staff time for filing and retrieving paper reports; and providing media and corporate hospitality decision makers with better access to inspection information.

However, PDAs also have substantially increased the amount of time it takes staff to complete inspections. We interviewed 50 randomly selected inspectors throughout the state—approximately one-third of the division's inspection staff. Eighty-four percent reported that inspections were conducted faster before the PDAs were introduced, stating that the old manual process of recording violations was 25% faster (median); the range of responses was 5% to 100%.<sup>9</sup> Inspectors complained of persistent malfunctions in uploading and downloading

<sup>8</sup> Prior to the use of PDAs, and when PDAs have malfunctioned, inspectors have conducted inspections by hand, using "bubble sheets." Bubble sheets, commonly used for standardized tests, allow inspectors to darken a circle associated with each violation found. The sheets were then read into an optical scanner and results were uploaded to a mainframe or server.

<sup>9</sup> For those inspectors who reported that a manual inspection was not faster, 10% stated that PDAs were faster and 6% found no difference.

information to the agency server and cited software problems such as poorly organized drop down menus and difficult navigation between screens.

### **The division has begun taking steps to address the inspection shortfall**

The division has taken several steps to address the inspection shortfall, including hiring additional staff, considering lowering inspection frequency requirements, and making enhancements to the handheld computers. However, it is unclear at this time if these changes will improve productivity enough to compensate for the shortfall in inspections. If these changes are insufficient to meet statutory requirements, the division should consider either modifying its fees and using the revenue to hire additional inspectors or pursuing a statute change to reduce the number of inspections required.

The division hired 17 inspectors in Fiscal Year 2004-05 and has 10 vacancies within its authorized 159 positions. Division managers indicate that the new staff should produce more inspections once they become fully trained. However, the division has 21 fewer authorized positions than in Fiscal Year 2002-03, when it lost positions to fund the agency-wide licensing system and call center.

In addition, the division plans to amend its rule to reduce the number of required inspections to the level mandated by statute, which will eliminate the need for approximately 50,000 inspections. The rule change would require all food establishments to be inspected only twice a year; most lodging establishments to be inspected once annually; and hotels, motels, transient rooming houses, and bed and breakfasts to be inspected twice annually. Reducing these inspections would resolve approximately 85% of the inspection shortfall.<sup>10</sup> While this change would reduce the level of required oversight of food and lodging establishments, it may have limited impact on actual regulation, as the division has not met the

inspection frequency requirements of the rule for at least several years.

The division is currently planning improvements to the PDAs. Potential technical enhancements include more convenient drop down menus and hardware-software interface improvements designed to speed up the inspection process. To ensure the success of these enhancements, it will be critical for the division to carefully monitor implementation and conduct adequate field-testing prior to full deployment of the new technology.

### **There are several options for addressing the problem of missed inspections**

If resolving the PDA problems, reducing inspection frequency, and fully training new staff do not enable the division to meet statutory inspection requirements, the division will need to take additional steps. These could include

- modifying its fees and using resulting revenues to hire additional inspectors or
- pursuing a statute change to further reduce the number of inspections required.

#### ***Option 1 - Modify fees and use revenue to hire inspectors***

In this option, the division would increase its regulatory fees and use the resulting revenue to hire more inspectors. Feasible revenue options include adjusting food and lodging establishment licensing fees, creating a re-inspection fee, and targeting selected fees, like the restaurant plan review fee.

Unlike Florida, most states regulate food and lodging establishments at the local level (e.g., county or municipality). Because these states have multiple jurisdictions regulating restaurants, hotels, and motels, we were limited in our ability to compare Florida's regulatory fees to those of other states.<sup>11</sup>

Exhibit 5 shows the division's food and lodging fees compared with jurisdictions in other states. For example, Florida currently charges lodging operators a fee of \$190 for a single unit and a maximum fee of \$370 for over 500 units.

<sup>10</sup> In calculating the inspection shortfall, we have included all inspections the division must conduct, i.e., routine, call back, temporary food service events, etc.

<sup>11</sup> Our analysis is based on a non-representative sample of jurisdictions in other states that were selected based on availability of website information.

In contrast, Las Vegas, Nevada, which is similar to Florida in its reliance on tourism, charges all establishments a \$250 base license fee and \$2.85 per room for a maximum of \$3,750. Florida’s restaurant license fees are based on the number of seats and range from \$262 to \$357, while Las Vegas charges a base fee of \$146 plus \$1.95 per seat. See Appendix A for more detailed examples of Florida’s fees and those of jurisdictions in other states.

**Exhibit 5  
Florida’s Food and Lodging Fees Compared with Fees in Other Jurisdictions**

Jurisdiction	Fee Amount	Fee Basis
<b>Food Service</b>		
Florida	\$262 - \$357	Number of seats
Clark County (Las Vegas) NV	\$146 plus \$1.95 per seat	Number of seats
San Diego County CA	\$423 - \$1,278	Number of employees
Fulton County (Atlanta) GA	\$200 - \$400	Various criteria - type of meals served and number of seats
<b>Lodging</b>		
Florida	\$190 - \$370	Number of units
Clark County (Las Vegas) NV	\$250 plus \$2.85 per unit max fee \$3,750	Number of units
San Diego County CA	3 or fewer units \$120 4 or more units \$120 plus \$3 per unit	Number of units
Fulton County (Atlanta) GA	\$200 - \$400	Number of units

Note: Our analysis is based on a non-representative sample of jurisdictions in other states that were selected based on availability of website information.

Source: Rule 61C-1.008, *Florida Administrative Code*, and official websites for Clark County, NV; San Diego County, CA; and Fulton County, GA.

Moreover, Florida does not currently charge a fee for re-inspections, which are necessary to follow up on critical violations. In Fiscal Year 2004-05, the division performed 23,936 re-inspections. Other jurisdictions charge re-inspection fees. For example, the city of San Antonio, Texas, charges re-inspection fees that range from \$36 to \$103 (see Appendix A). In addition to generating revenue, charging a re-inspection fee would create a financial incentive for facility operators to comply with state health and safety requirements.

Finally, the division could raise targeted fees, such as the charge for reviewing restaurant design plans to ensure they conform to generally accepted safety standards. The division’s current charge for this service (\$150) is lower than the fees charged by some other jurisdictions (see Appendix A).

The amount of revenue generated by raising fees would depend on the mix of fee changes adopted. Overall, increasing staffing to meet the inspection frequency mandates of statute, at current productivity levels, would require 11 additional positions and a 3% increase in regulatory fee revenue, while meeting the inspection frequency requirements of the current rule would require 61 additional inspectors and an 18% increase in fee revenue.<sup>12, 13</sup>

**Option 2 - Reduce inspection frequency requirements by changing statute**

A second alternative would be to change the law to lower the number of lodging inspections required by statute annually to the level that can be performed by current division staffing. Lowering inspection frequency requirements would decrease workload, but has disadvantages.

In Fiscal Year 2004-05, the division did not meet its once-a-year inspection requirements for 68% of apartment buildings and the twice a year inspection requirement for 78% of lodging establishments (i.e., hotels, motels, and rooming houses). The Legislature could amend the law to require annual inspections of lodging establishments and mandate inspections of apartment buildings only upon receipt of a complaint, as is currently done with resort condominiums and dwellings. However, it would not be desirable to reduce the mandated inspection frequency for food establishments as

<sup>12</sup> Division staff estimate that it costs \$53,328 to hire, train, and equip an inspector. These costs include salary, benefits, equipment, and assorted hiring costs. The number of staff needed will likely increase over time because the number of licensees has been increasing an average of 2.3% a year since 1996.

<sup>13</sup> In calculating the staff needed to meet statute and rule mandates, we have included all inspections the division must conduct, i.e., routine, call back, temporary food service events, etc.

this would be contrary to U.S. Food and Drug Administration recommendations and could increase the risk of foodborne illnesses; the division is also generally meeting the twice a year inspection frequency mandate for these establishments.

Reducing inspection frequency for apartments and lodging establishments has disadvantages. Relying on complaints of unlawful activity to generate apartment inspections, rather than visiting establishments on a regular basis, may not adequately ensure public safety. Similarly, reducing lodging inspections to once a year could increase patrons' exposure to potential safety hazards. However, if the division continues at its current productivity and staffing levels, this reduced oversight would occur by default.

***The division's sanctioning system is burdensome to licensees and the program***

The division's current system for sanctioning license holders who have violated state regulations is multi-layered and time-consuming for licensees and the division. The division has three methods for inducing licensees to comply with program requirements—fines, mandated training, and license suspension or revocation which is reserved for the most extreme cases of noncompliance. These are similar to the sanctioning tools used by other state and federal regulatory agencies. However, the division's method for imposing these sanctions is cumbersome and could be improved by adopting an appeal system similar to the one used by the Department of Agriculture and Consumer Services (DACS) Food Inspection Program.

**Sanctioning system is cumbersome for licensees**

Under the current system, the sanctioning process can be cumbersome and onerous to licensees. Specifically, licensees who are cited

for violations and are notified that they are being sanctioned are required to waive their rights to a hearing or proceed with a hearing before they are told what specific sanction (e.g., fine or licensure action) division management intends to impose.<sup>14</sup> The majority of sanctions are fines, which can vary in dollar amount. Licensure actions can include suspension or revocation that puts the establishment out of business. This practice of withholding specific penalty information and emphasizing the appeal process tends to discourage rapid and cooperative settlement of the cases.

As shown in Exhibit 6, the sanctioning process begins when an inspector cites a violation during a field visit and then conducts a follow-up inspection and finds continued noncompliance. The division then sends an administrative complaint to the entity. The licensee can either request a hearing in writing, or agree in writing to waive hearing rights. If the licensee waives hearing rights, then a settlement officer will create a stipulation agreement that imposes the sanction, the agreement is mailed to the licensee and must be signed and returned to the settlement officer. This back and forth process requires several telephone calls, faxes, or mailings to complete.

If the licensee does not waive hearing rights and pursues a hearing, a department attorney conducts an informal hearing and attempts to establish a consent order or settlement agreement. The licensee also may request a hearing before the Division of Administrative Hearings (DOAH) and circuit court.

This multi-layered process requires division compliance staff, pre-hearing staff, and department legal staff to track and process cases. These staff also review each case before sending it to the division director for final action.

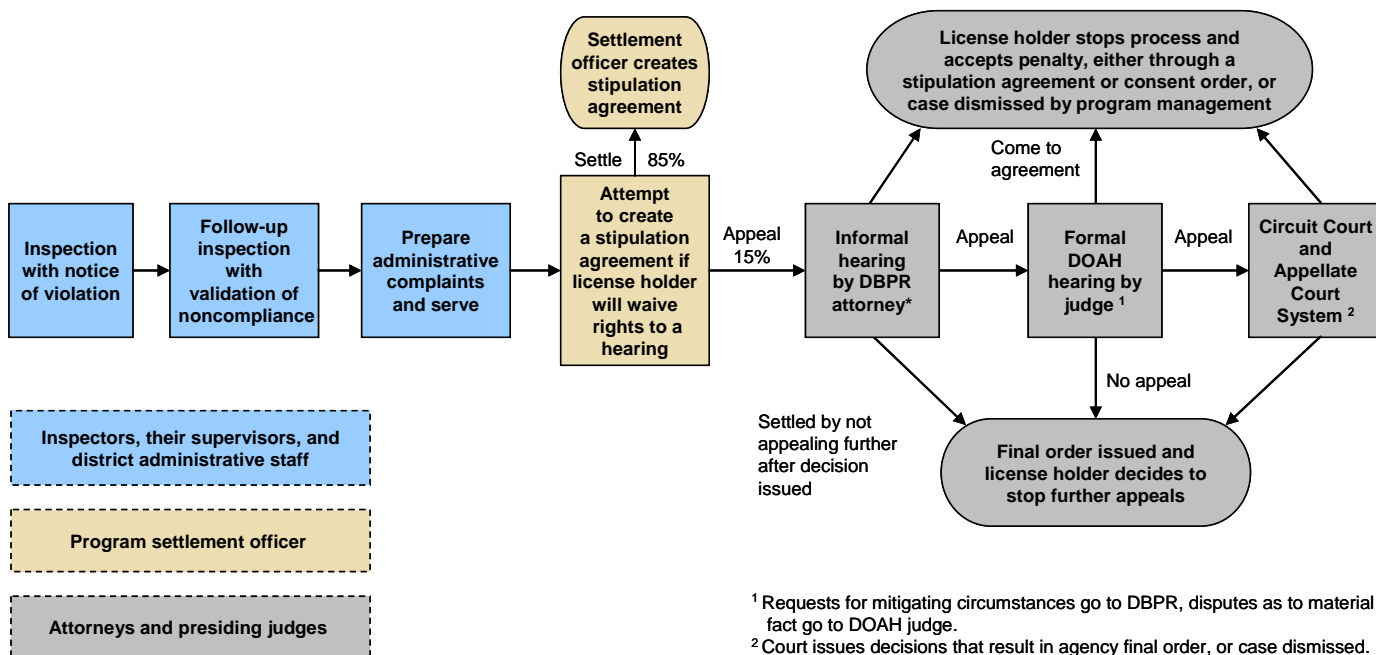
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<sup>14</sup> The division also may order the emergency suspension or revocation of licensure for the most serious violations.



**Exhibit 6**  
**The Division's Current Informal Appeal System Is Complex**

**Current Process for Administrative Complaints**



In contrast, DACS administers a similar, slightly smaller program that regulates food distribution establishments but uses a much less burdensome appeal process.<sup>15, 16</sup> When the DACS food program finds violations warranting formal sanction, it indicates the amount of the potential fine or licensure action in its combination notification letter and settlement agreement and does not require licensees to waive their hearing rights. DACS provides for one level of informal appeal prior to a DOAH hearing. Although the DACS program initiated about the same percentage of sanction cases per inspection as the division during Fiscal Year 2004-05, the DACS program used substantially fewer positions to administer the pre-hearing phase. The DACS program tracked and monitored sanctions in the pre-hearing phase using one FTE compared to five

<sup>15</sup> Chapter 500, *F.S.*, Food Products.

<sup>16</sup> The DACS program conducted about 70% as many inspections in Fiscal Year 2004-05 as the division. However, the division also inspects lodging establishments, mostly for sanitation and safety violations, which are included in the comparison.

FTEs for the Division of Hotels and Restaurants program. Both programs generated about the same ratio of informal appeals per sanction. However, the DACS process generated only one DOAH appeal during the period compared to 35 appeals for the division.

Adopting the enforcement process used by DACS could thus streamline the process and decrease costs. By making the process more efficient the division should be able to convert some staff who are assigned to the pre-hearing phase of the enforcement process to field inspectors, which would help the program achieve its statutory inspection frequency standards. Under this system, the division would use its existing authority to

- inform licensees of proposed sanctions at the onset of the administrative complaint process;
- impose fines and licensure actions immediately if licensees do not appeal the action;

- establish an informal hearing process for those fines that are informally appealed; and
- provide for cases not resolved through the informal process to be sent directly to DOAH.

***Division website should be more consumer-friendly***

The division operates a website that has the potential to be a valuable resource for consumers seeking information about the compliance history of restaurants and lodging establishments. However, the website is currently designed to serve primarily as an advisory tool for the hotel and restaurant industry rather than a source of useful information for consumers. Given that consumer protection is the division’s primary mission, citizens should be able to easily access information from its website.

The division’s website is currently designed to serve the industry by providing readily accessible information such as newsletters, bulletins on food service employee training requirements, and statutory and policy changes affecting operations.<sup>17</sup> In contrast, consumer information is relatively difficult to navigate, find, and interpret. For example, consumers wishing to review the inspection history of a particular restaurant or hotel must download a program, which when executed, completes the search by downloading a spreadsheet of unlabeled rows and columns. To find inspection results, consumers must navigate through a series of hyperlinks that offer many options and utilize industry jargon. For example, one drop down menu lists 270 alphabetical options and places restaurants under “P” for “permanent food establishment”.

The division should redesign its website to serve both the industry and the consumers. Ideally,

the website should enable consumers to readily view inspection and disciplinary reports as well as compliance history information on individual establishments and chains. Improved access could be provided by creating search tools and easy-to-understand links that take the user directly to the information desired. Other states currently offer such websites. For example, the website for Louisiana’s Office of Public Health allows consumers to type in the name of a restaurant, click on a “search” button, and see inspection results in a matter of seconds.

***Performance measures should be improved to better reflect core mission***

The division’s current performance measures do not presently reflect its primary services and core mission of protecting the public from unsafe lodging and food establishments. The division should report additional measures to the Legislature to provide an accurate account of the division’s efforts.

Currently, the division reports two legislative outcome measures that address its food and lodging establishment regulatory activities. While these provide useful information, the only performance measure that assesses the outcomes of the division’s work is “the percentage of licensees in compliance with all laws and regulations for food and lodging establishments.” This measure is based upon compliance at initial inspection.<sup>18</sup>

Reporting additional information on the number of foodborne illness outbreaks and the number of cases associated with these outbreaks would provide the Legislature with more complete data on the division’s efforts to protect the public.<sup>19</sup> This data is readily available from the Department of Health. Exhibit 7 shows that the number of reported foodborne outbreaks and the number of persons affected by these outbreaks have declined over recent years.

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<sup>17</sup> Meeting minutes from the division’s advisory council indicate that “information is produced for operator education and awareness rather than as a consumer tool.” The purpose of the advisory council is to promote better relations, understanding, and cooperation between the division and the industry it regulates. Members are primarily industry representatives, with one lay member, and one hospitality educator.

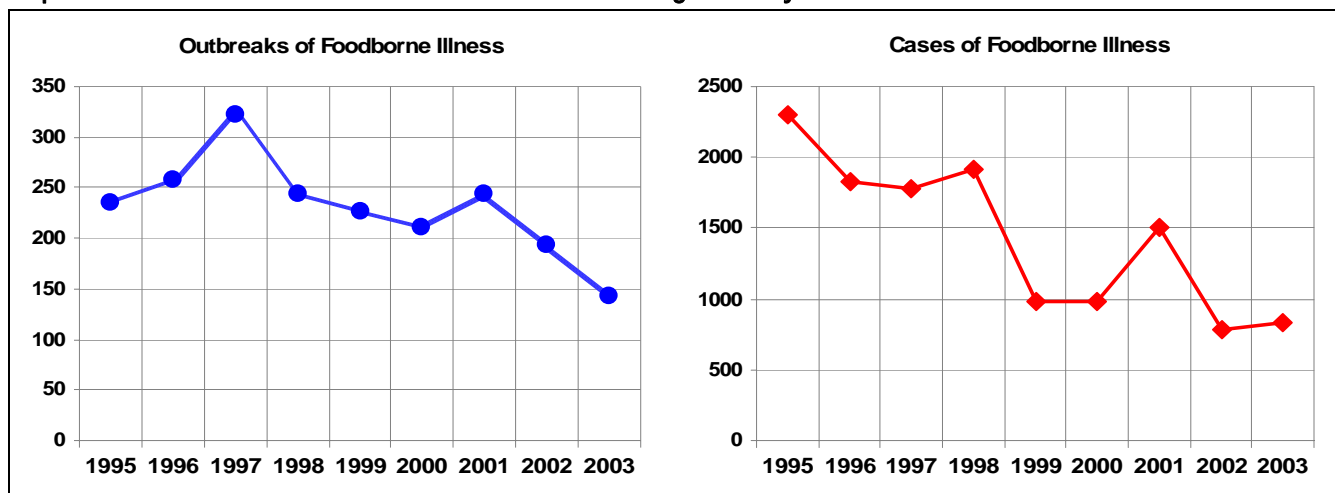
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<sup>18</sup> The second program outcome measure is, “percent of hotel and restaurant licenses processed in 30 days.”

<sup>19</sup> Foodborne illness outbreaks relate to the number of sources of the illness, while cases indicate the number of people affected.

**Exhibit 7**

**Reported Foodborne Illness in Food Establishments Regulated by the Division Has Declined**



Source: Florida Department of Health.

In addition, the division should inform the Legislature of its efforts to meet statutory inspection frequency requirements. Specifically, the division should report as a performance measure the percentage of statutorily required inspections completed for both food and lodging establishments.

## Conclusions and Recommendations

Although the Division of Hotels and Restaurants has improved its processes over the last decade, it has not inspected food and lodging establishments as often as required by state law and rule. Factors contributing to this problem are reduced staffing and reductions in productivity due to changes in inspection field procedures and problems with handheld computers. The division’s current enforcement process is burdensome for both the program and license holders, and its website is not user-friendly for consumers. Finally, the division’s performance measures do not fully reflect its core mission.

To address these issues, we recommend that the division

- take steps to ensure the success of PDA enhancements;

- if necessary, modify its fee structure and use resulting revenue to fund additional inspection staff;
- streamline its enforcement process;
- develop a website with better consumer access; and
- track and report performance measures with a stronger connection to the division’s core mission.

Ensure success of PDA enhancements. We recommend that the division continue to work with its vendor to ensure that planned enhancements to the handheld computers are successful. Once enhancements such as improved drop down menus and easier navigation between screens are made, the new PDAs should be field-tested by a number of inspectors in each district and full implementation should not proceed until field-testing demonstrates that the changes are successful. When PDA modifications are fully tested and implemented, division management and the vendor should train all inspection staff on how to efficiently use the technology. The division should closely monitor the introduction and implementation of the new PDAs, and if productivity continues to be negatively affected, it should consider more suitable technological tools.

Modify fee structure and use revenue to hire more inspectors. If the division continues to be unable to meet inspection frequency requirements after amending its rule and improving the PDAs, we recommend that it submit a plan to the Office of Planning and Budgeting and the Legislative Budget Commission to increase program revenue and staff. Alternatives that should be considered include

- increasing food and lodging licensing fees;
- implementing a re-inspection fee; and/or
- increasing plan review fees.

Streamline the enforcement process. To improve its enforcement process, we recommend that the division adopt a system similar to the one used by the Department of Agriculture and Consumer Services food program. Under this revised system, the division would notify licensees of intended sanctions without first requiring a waiver of appeal rights and simplify its informal appeal process. This would allow the reallocation of some FTEs to other activities.

Redesign website. To provide more user-friendly consumer access, we recommend that the division modify its website by developing a searching tool and creating links that lead directly to the information desired. Consumers should be provided direct access to, at a minimum, inspection and disciplinary reports. In addition, the division should pilot-test these modifications to ensure that consumers can successfully navigate to the desired result.

Improve performance measures to better reflect core mission. To enable the Legislature and the public to better assess the division’s performance, we recommend that the division adopt measures that more fully assess its core mission of protecting the public from foodborne illnesses. These measures should include

- number of reported foodborne illness outbreaks per 1,000 food licenses;
- number of reported foodborne illness cases per 1,000 food licenses;
- percentage of food establishments inspected in accordance with statutory inspection frequency requirements; and
- percentage of lodging establishments inspected in accordance with statutory inspection frequency requirements.

## Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Business and Professional Regulation for review and response. The Secretary’s written response is included in Appendix B.

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OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective 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). Cover photo by Mark Foley.

**Florida Monitor:** [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

Project supervised by Kara Collins-Gomez (850/487-4257)  
 Project conducted by Linda Vaughn (850/487-9216), Don Wolf (850/487-9237) and Chad Lallemand  
 Gary R. VanLandingham, OPPAGA Director

**Appendix A**

**Florida’s Fees for Lodging and Food and Those of Jurisdictions in Other States**

Fee Type	Fee Schedule
<b>Lodging</b>	
<b>Florida</b>	Single unit = \$190 2 – 25 units = \$200 26 – 50 units = \$215 51 – 100 units = \$230 101 – 200 units = \$255 201 – 300 units = \$285 301 – 400 units = \$315 401 – 500 units = \$340 Over 500 units = \$370
Clark County (Las Vegas), NV	\$250 + \$2.85 per unit up to a maximum of \$3,750
San Diego County, CA	Up to 3 units = \$120 4 or more units = \$120 + \$3 per unit over 3
Howard County, MD	\$55 biennial fee per unit, or \$27.50 per year per unit
Minnesota <sup>1</sup>	\$6 per unit up to \$600
Fulton County (Atlanta), GA	1 – 20 rooms = \$200 21 – 50 rooms = \$300 51+ rooms = \$400
Kenosha County, WI	5 – 30 rooms = \$242 31 – 99 rooms = \$304 100 – 199 rooms = \$367 200+ rooms = \$420
<b>Food Service</b>	
<b>Florida</b>	Permanent = \$242 Mobile Food Dispensing Vehicle = \$347 Catering = \$263 Temporary food service establishments and vendors 1 – 3 day events = \$91 4 – 30 day events = \$105 Annual vendor = \$1,000 Vending machines = \$21 Theme park food carts 1- 5 carts = \$262 6 – 10 carts = \$273 11 – 15 carts = \$294 16 – 20 carts = \$315 21 – 25 carts = \$336 26 or more carts = \$357

Fee Type	Fee Schedule
Florida (Continued)	Seating 1 – 49 seats = \$262 50 – 149 seats = \$273 150 – 249 seats = \$294 250 – 349 seats = \$315 350 – 499 seats = \$336 500 or more seats = \$357
Clark County (Las Vegas), NV	\$134 per establishment plus \$1.79 a seat (currently) \$146 per establishment plus \$1.95 a seat (effective January 2006)
Minnesota <sup>2</sup>	Base fee = \$145 Small establishment = \$220 Medium establishment = \$355 Large establishment = \$495
City of Austin, TX	1 – 9 employees = \$300 10 – 25 employees = \$420 26 – 50 employees = \$600 51 – 100 employees = \$780 > 100 employees = \$960
Richland County, OH	\$212 - \$500 fees for establishments less than 25,000 sq. ft. \$286 - \$994 fees for establishments greater than 25,000 sq. ft.
Washington County, OR	1 -15 seats = \$432 16 – 50 seats = \$486 51-150 seats = \$540 > 150 seats = \$647
San Diego County, CA	0 – 2 employees = \$423 3 – 10 employees = \$495 11 – 25 employees = \$576 26 – 100 employees = \$697.50 > 101 employees = \$1,278
Fulton County (Atlanta), GA	Category 1 = \$200 Category 2 = \$300 Category 3 = \$400 Category determination is based on various criteria including type of meals served (breakfast, lunch, dinner), typical customer counts per meal, and number of seats
Western Upper Peninsula, MI <sup>3</sup>	0 – 50 seats = \$316 51 – 100 seats = \$426 101+ = \$476
City of Milwaukee, WI	Based on gross food sales: <\$20,000 = \$229 20,0001 - \$200,000 = \$385 200,001 - \$2,000,000 = \$862 >\$2,000,000 = \$1,372
City of San Antonio, TX	1-3 employees = \$113.30 4-6 employees = \$226.60 7-10 employees = \$453.20 11-25 employees = \$679.80 25-50 employees = \$906.40 51 employees = \$1,133
Kenosha County, WI	\$365

Fee Type	Fee Schedule	
<b>Re-Inspection</b>		
	<b>Florida</b>	None
	City of Milwaukee, WI	Based on gross food sales: 1st reinspection = \$74 2nd reinspection = \$148 3rd reinspection = \$222 4th reinspection = \$296
	City of San Antonio, TX	1st re-inspection = \$36.05 2nd re-inspection = \$61.80 3rd inspection = \$87.55 4th and all subsequent inspections = \$103
	Central Michigan District, MI <sup>4</sup>	\$82 per critical item

<b>Plan Review</b>		
	<b>Florida</b>	\$150
	Fulton County, GA	\$200 - \$400
	Pima County (Tucson), AZ	\$382
	San Diego, CA	0 – 499 sq. ft. = \$504 500 – 1,999 sq ft. = \$801 2,000 – 3,999 sq. ft. = \$904.50 4,000 – 5,999 sq. ft. = \$1,003.50 6,000 – 7,999 sp. ft. = \$1,507.50 8,000 – 19,999 sp. ft. = \$2,007 20,000+ sq. ft. = \$2,007
	City of St. Paul, MN	0 – 12 seats = \$350 12+ seats = \$575
	Western Upper Peninsula, MI	Remodel = \$150 New construction or extensive remodel = \$500
	Clark County (Las Vegas), NV	\$220 + \$1.10 per seat \$27 per drive-up window

<sup>1</sup> Minnesota minimum rates set by statute.

<sup>2</sup> As defined by Minnesota statute, a “small establishment” has no salad bar, possesses food service equipment that consists of no more than a deep fat fryer, a grill, two hot holding containers, one or more microwave ovens, and assorted other requirements. A “medium establishment” has a range, oven, steam table, salad bar or salad preparation area, more than one deep fat fryer, one grill, or two hot holding containers, where food is prepared at one location and served at one or more separate locations. A “large establishment” meets some of the criteria for medium establishments, seats more than 175 people, offers the full menu selection an average of five or more days a week, and prepares or serves 500 or more meals a day.

<sup>3</sup> Western Upper Peninsula, MI serves Baraga, Gogebic, Houghton, Keweenaw, and Ontonagon counties.

<sup>4</sup> Central Michigan serves Arenac, Clare, Gladwin, Isabella, Osceola, and Roscommon counties.

Note: Our analysis is based on a non-representative sample of jurisdictions in other states that were selected based on availability of website information.

Source: Rule 61C-1.008, *Florida Administrative Code*, and official websites for other jurisdictions.

# Appendix B

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STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION



November 3, 2005

**Jeb Bush**  
Governor

**Simone Marsteller**  
Secretary

Gary R. VanLandingham, Director  
Office of Program Policy Analysis and Government Accountability  
Claude Pepper Building, Room 312  
111 West Madison Street  
Tallahassee, FL 32399-1450

Dear Mr. VanLandingham:

**Office of the Secretary**

1940 North Monroe Street  
Tallahassee, Florida  
32399-0750

Enclosed is the Department's response to the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) October 2005 draft report based on a review of this department's Division of Hotels & Restaurants.

**VOICE**

850.413.0755

We have worked closely with your staff in providing information as the basis of your report, and offer the following additional information in response to the specific OPPAGA findings, conclusions and recommendations.

**FAX**

850.921.4094

We appreciate the time and energy put forth by your staff and we look forward to reviewing the final report. We are confident that your efforts to improve the operations of state government will continue to assist us all in providing better and more efficient service. Please contact me at 413.0755 if you need further information or have additional questions at this time.

**EMAIL**

Secretary@dbpr.state.fl.us

**INTERNET**

www.MyFlorida.com/dbpr

Sincerely,

/s/

Simone Marsteller  
Secretary

cc: Andy Edwards, Deputy Secretary  
Ron Russo, Inspector General  
Geoff Luebkekmann, Director





STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

**Division of Hotels and Restaurants  
Response to 2005 Office of Program Policy and Accountability Audit**

**Finding #1 - Inspection processes have improved significantly in recent years**

We are pleased the report acknowledged division performance improvement, and would like to highlight some additional services and accomplishments since OPPAGA's last audit in 1998.

*Enrolled in Food & Drug Administration's Voluntary National Retail Food Regulatory Program Standards:*

During the past several years the division has actively sought national third-party recognition of the program's quality through the US FDA "Recommended National Retail Food Regulatory Program Standards," a set of benchmark standards for food safety programs. These benchmarks for programs of our type are not simply minimum requirements, but establish best practices for retail food safety inspection programs. These nine standards are primary tools for the division's continuous improvement in food safety operations, its largest area of activity. The goal is to fully integrate the standards into core values and daily operations. The division currently meets four of the standards and is developing a strategic action plan timeline to achieve the remaining standards.

*Electronic division training database developed and implemented:*

Chapter 509, Florida Statutes, contains several initial and ongoing training requirements for inspection staff. The division has developed and implemented an electronic training database to comprehensively track these. This database achieves work efficiencies through a single, streamlined data entry point, provides automated reporting, and results in significant time savings in staff data entry and report compilation. Further, all training records are scanned and electronically stored on a secure server then hyperlinked to the database. This dramatically reduces paper files allowing for faster and easier access. Status reports are produced and posted to the intranet so that both supervisors and employees may easily determine and track compliance with statutory training requirements, as well as FDA Standard 2, *Employee Training*.

*Enhanced reporting capabilities:*

LicenseEase reporting of inspection staff key performance indicators and workload factors are available to each supervisor on a monthly basis and on demand. This allows supervisors to electronically monitor inspector performance indicators without having to handle and sort huge quantities of paper reports. This also allows inspection staff to monitor their own reports for compliance with established requirements.

*"Tri-Agency" Quarterly Meetings (Florida Departments of Agriculture & Consumer Services, Health, and Business & Professional Regulation):*

These meetings are held quarterly to ensure tight coordination of services and to avoid duplicated effort among the state's three food safety partner agencies. In addition to operational efficiencies, open lines of communication and cooperation are fostered among the agencies. Meeting participants include Bureau Chiefs from each agency, facilitating faster decision making in common/collective interests and agency responsibilities. Out of this has also grown an effective and responsive protocol for transferring regulatory responsibility between agencies as food establishments change their business models, and thus the agency having jurisdiction.

*The division has well established goals and objectives and strives for continuous improvement and refinement of the program:*

To further improve division business processes, each section manages its own continual improvement and refinement efforts. Highly motivated and resourceful staff are dedicated to protecting the public health as described in our mission statement. Technology is constantly leveraged and relied upon at every level to further enhance and streamline business processes, from desktop efficiencies to enterprise-wide initiatives.

### **Finding #2 - Inspections are not conducted as often as required by law or rule**

The division is in the process of adopting an inspection frequency rule that is consistent with Chapter 509, Florida Statutes. The proposed revised rule was initially filed September 27, 2005, and noticed in the Florida Administrative Weekly October 7, 2005. These changes are supported by the program's strong inspection quality and standardization process, as well as call-back and enforcement procedures.

The division is preparing to replace the first-generation handheld inspection device currently in service. Replacement of these personal digital assistant or "PDA" devices is being led by the department's Division of Technology. Integral to this undertaking is planning and testing to ensure success of the next generation devices and enhancements to operating software. Division staff have tested and evaluated a number of proposed models, and are currently in the selection phase. Testing, development, training and rollout of the devices are being tightly coordinated. This ongoing effort will result in technological improvements that maximize automation and productivity.

The PDAs have provided a number of benefits, including greatly increased report legibility, improved licensee education, and standardized violation documentation. "Back office" and management level benefits include dramatically increased reporting capabilities, reduced handling, storage, and reliance on paper, and online access to inspection information.

While the OPPAGA report attributes reduced core mission inspection productivity to the PDAs, we feel impact from additional factors has been minimized. Although not required by statute, and therefore not credited toward the annual statutory inspection mandate, the division performs approximately 23,000 "call back" inspections annually to verify correction of violations cited at previous "routine," credited inspections. Forgoing these un-credited inspections would increase the number of mandatory inspections completed, but would detract from accomplishing the program's mission of ensuring compliance. Additionally, the division performed over 13,000 emergency response visits after the 2004 hurricanes, ensuring that restaurant owners were operating in a safe manner. The division also conducts nearly 5,000 temporary event inspections annually. Call-back, emergency response and temporary event inspections are essential to protecting the public's health and should be taken into account in reviewing the division's performance.

The division is evaluating operational refinements that could relieve some non-credited inspections, and increase available capacity to perform statutorily mandated inspections. To that end, repeat offenders cited for critical violations, food borne illness risk-related violations, or life and fire safety violations, may be subject to expedited administrative complaint action without repeated visits from inspectors.

Regarding fee and staffing recommendations, additional research and analysis would be necessary prior to any discussion of fee increases. Until the full benefits of the division's technology are realized, and additional streamlining of business processes studied and implemented, it would be premature to initiate staffing or fee increases.

**Finding #3 - The division's sanctioning system is burdensome to licensees and the program**

The division has taken steps to streamline its enforcement process. Continual improvement efforts have resulted in revised administrative complaint packets. Effective September 26, 2005, proposed penalties are provided in initial documents to respondents, eliminating uncertainty and encouraging settlement agreements without needless and costly litigation. This streamlines division's case settlement procedures and resolves cases faster.

Earlier improvements to the process include electronic transmission of case documents among division users, which was implemented effective July 8, 2005. This has reduced telephone and fax contacts among staff to process cases. Additionally, effective August 10, 2005, cases sent to the department's legal office for action are tracked through the department's Single Licensing System replacing stand-alone tracking methods. Effective September 1, 2005, electronic file routing and sharing replaced photocopying and delivering case documents to the legal office, again reducing staff handling and total time to process cases.

Additional improvements are under development and consideration. These include use of scanning technology by district offices to result in electronic case handling from end-to-end, and revision of case documents provided to respondents that will simplify understanding and enable faster response. These initiatives will also speed case handling.

Further, field testing of scanning technology and electronic case handling began October 17, 2005, with a pilot project in the Jacksonville district office. This effort has the potential to dramatically reduce elapsed time to complete case processing, reduce staff time invested, and improve access to case-in-progress documents for anyone in the division, whether located in the field or headquarters.

**Finding #4 - Division website should be more consumer-friendly**

Web site access to food service and lodging inspection information was first made available in November 2004. In order to improve functionality and ease of use, the division initiated meetings with the Division of Technology on September 21, 2005, to refine web site search and view functionality. Preliminary requirements were discussed with department technology staff, and work on this improvement project began October 17, 2005. Integral to this effort, division stakeholders will be included to ensure the functionality improvements are user friendly. Targeted results include simplified terminology; a more intuitive user interface; "cleaner" user screen designs; streamlined data display for public-facing web pages; and faster navigation with fewer steps to obtain results.

**Finding #5 - Performance measures should be improved to better reflect core mission**

The division has begun studying potential goals, objectives and performance measures that would form a stronger connection to its core mission. The division does not anticipate including measures using food borne illness "cases" (numbers of individuals involved in a single outbreak) or "outbreaks" (a food borne illness event traceable to the same root cause or "vector") among these, however. A number of scenarios exist that would produce false impressions of both division and licensee performance. Food borne illness outbreaks may occur that are not attributable to or within the control of the division or its licensees.

Recent examples of this are the Spring/Summer 2005 Florida *cyclospora* outbreak which sickened 300 people. This outbreak was attributed to produce contaminated prior to import, rather than a performance failure by either the division or its licensee. An even more dramatic example is the 2003 Pittsburgh, PA, restaurant Hepatitis A outbreak that ultimately affected 660 people and resulted in 4 deaths. This event was traced back to farming practices in a foreign country of origin for a particular produce item, and if relied upon as a performance measure, would inaccurately characterize the inspection authority's performance as the underlying cause of an event that was outside the authority's ability to control.

While food borne illness statistics may not provide accurate performance assessments, the division will evaluate other potential measures which may do so, such as those related to education and awareness. Internal and external educational efforts, designed to result in increased operator awareness, present opportunities for positive impacts on the public health and safety and may potentially yield significant performance measures.