

DEPARTMENT OF HEALTH AND HOSPITALS  
OFFICE OF PUBLIC HEALTH  
REGULATION OF FOOD SAFETY  
IN RETAIL FOOD ESTABLISHMENTS



PERFORMANCE AUDIT  
ISSUED NOVEMBER 21, 2012

**LOUISIANA LEGISLATIVE AUDITOR  
1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
BATON ROUGE, LOUISIANA 70804-9397**

**LEGISLATIVE AUDITOR**  
DARYL G. PURPERA, CPA, CFE

**FIRST ASSISTANT LEGISLATIVE AUDITOR**  
**AND STATE AUDIT SERVICES**  
PAUL E. PENDAS, CPA

**DIRECTOR OF PERFORMANCE AUDIT SERVICES**  
NICOLE B. EDMONSON, CIA, CGAP, MPA

**FOR QUESTIONS RELATED TO THIS PERFORMANCE AUDIT, CONTACT  
KAREN LEBLANC, PERFORMANCE AUDIT MANAGER,  
AT 225-339-3800.**

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor.

This document is produced by the Louisiana Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Seven copies of this public document were produced at an approximate cost of \$37.94. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's website at [www.la.gov](http://www.la.gov). When contacting the office, you may refer to Agency ID No. 9726 or Report ID No. 40120003 for additional information.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Kerry Fitzgerald, Chief Administrative Officer, at 225-339-3800.



LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

November 21, 2012

The Honorable John A. Alario, Jr.,  
President of the Senate  
The Honorable Charles E. "Chuck" Kleckley,  
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the Department of Health and Hospitals, Office of Public Health's regulation of food safety in retail food establishments. This audit was requested by the Department of Health and Hospitals to identify potential improvements in the management of the Retail Food Program.

The report contains our findings, conclusions, and recommendations. Appendix A contains the Department of Health and Hospitals' response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of the Department of Health and Hospitals for their assistance during this audit.

Sincerely,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/ch

OPH 2012

---

# Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



## Department of Health and Hospitals - Office of Public Health Regulation of Food Safety in Retail Food Establishments

November 2012

Audit Control # 40120003

---

### Executive Summary

To prevent and minimize the prevalence of foodborne illness, public health agencies are responsible for regulating entities to ensure that they are compliant with each state's sanitary code. In Louisiana, the Office of Public Health (OPH), through its Retail Food Program, is the agency primarily responsible for the regulation of food safety and enforcement of the Louisiana sanitary code.<sup>1</sup> This performance audit reviews the regulatory processes OPH uses to ensure the safety of food in retail food establishments. Our objective and the results of our work are summarized below.

#### **Objective: Does OPH's Retail Food Program prevent and minimize foodborne illness in retail food establishments through its permitting, inspection, and enforcement processes?**

According to the State Epidemiologist, accurately quantifying foodborne illness cases is difficult because not all cases are reported, and many foodborne illnesses can also be transmitted through a means other than food served at a restaurant. Despite these difficulties, the State Epidemiologist estimates that Louisiana has 163,357 cases of foodborne illness annually. Of this number, he estimates that approximately 28,000 cases are from retail food establishments. However, not all these cases are reported. The State Epidemiologist receives approximately 2,930 reports of foodborne illness each year, of which 498 (17%) are attributable to retail food establishments.

To evaluate OPH's role in preventing and minimizing foodborne illness in retail food establishments, we examined the Retail Food Program's permitting, inspection, and enforcement activities and identified the following weaknesses:

- OPH issued permits to retail food establishments with uncorrected violations. Specifically, from fiscal year (FY) 2009 to FY 2011, OPH issued permits to four (13%) out of 30 establishments with critical violations and 40 (33%) of 122 establishments with non-critical violations that were identified during their pre-opening inspections.
- OPH did not conduct inspections on 5,849 (81%) of 7,252 high-risk retail food establishments in accordance with its risk model. In addition, OPH is not considering compliance history as a factor in its risk model as recommended by the U.S. Food and Drug Administration (FDA).

---

<sup>1</sup> When we refer to OPH in the report, we are referring to the Retail Food Program within OPH.

- OPH did not conduct 32% of required re-inspections to ensure critical violations were corrected. Specifically, from FY 2009 to FY 2011, 13,099 of 84,247 inspections identified at least one critical non-corrected violation. However, 4,200 (32%) of these 13,099 inspections did not receive a re-inspection to ensure the critical violation had been addressed.
- Despite the prevalence of violations, OPH rarely uses formal enforcement actions to address violations. Of the nearly 450,000 violations identified from FY 2009 to FY 2011, OPH issued only four compliance orders and assessed penalties totaling approximately \$1,300 for two of these compliance orders. However, OPH did not collect any of the penalties it assessed.
- Because 33% of establishments had repeat critical violations, OPH's enforcement process does not appear to deter non-compliance. Charging fees for re-inspections may help deter non-compliance.
- Inspection results are not fully disclosed to the public. Although Louisiana uses a website to publish inspection results, OPH estimates that approximately 3,140 inspections have not been uploaded to the website. In addition, the website does not contain all inspection results for each establishment. Because of these issues, calculating numerical scores or grades based on inspection results or posting actual inspection results on an establishment's premises may help improve transparency by allowing the public easy access to inspection information.

We also identified the following weaknesses related to OPH management's oversight of the program:

- Because of its current organizational structure, the Retail Food Program cannot hold sanitarians accountable to ensure they conduct required activities.
- Unlike other states, OPH's permit fees are not based on the size of the establishment and do not cover all services that they provide.
- OPH's internal programmatic database used to track activities is outdated and contains some unreliable and incomplete data.

## Background

**Retail Food Program Budget, Staffing and Mission.** In FY 2012, OPH's Retail Food Program was appropriated approximately \$11 million and had 86 authorized positions. The overall objective of the Retail Food Program is to prevent and minimize foodborne disease outbreaks through consulting, monitoring, issuance of permits and regulation of food establishments. The mission of the Retail Food Program is to:

- Promote health through education that emphasizes the importance of food safety
- Enforce regulations which protect the food supply and investigate foodborne illness outbreaks
- Provide leadership in food safety for the prevention of disease or injury

The Retail Food Program regulates multiple types of retail food establishments. The data analyses included in this audit focused on establishments with ecode 225 which include permanent food service establishments (restaurants) and kitchens and cafeterias in facilities such as nursing homes (hereinafter referred to as "establishments" throughout the report). There are other types of retail food establishments, including groceries, bars, concession stands, child care facilities and others.

**Food Safety Regulatory Processes.** State law<sup>2</sup> charges OPH with the responsibility of permitting and inspecting restaurants as well as enforcing compliance with Louisiana's sanitary code. The sanitary code is based on the federal Food and Drug Administration's (FDA) Food Code, which contains the federal government's recommendations for a uniform system of regulation to help ensure food safety. The three primary activities in OPH's regulatory process are permitting, inspections, and enforcement.

**Permit Process.** To operate in Louisiana, retail food establishments must submit an application and building plans for OPH's review and approval. Once approved, OPH conducts a pre-operational (opening) inspection. If no violations are identified, OPH issues a retail food permit which authorizes the retail food establishment to serve food. In FY 2011, OPH issued approximately 16,000 permits to establishments.<sup>3</sup> Permits are issued on an annual basis and expire on June 30 of each year.

**Inspection Process.** According to the sanitary code, OPH is only required to conduct a pre-operational inspection. However, OPH conducts four types of inspections of retail food establishments to determine compliance with the state's sanitary code. From FY 2009 to FY 2011, OPH conducted approximately 98,000 inspections of establishments.<sup>4</sup> The types of inspections OPH conducts include the following:

---

<sup>2</sup> La. R.S. 40:5 *et al*

<sup>3</sup> Ecode 225

<sup>4</sup> Ecode 225

- **Pre-operational inspections** are conducted before an establishment can operate.
- **Routine inspections** are conducted one to four times per year depending on the risk level of the establishments.
- **Re-inspections** are conducted when a routine inspection identifies a critical, non-corrected violation of the sanitary code.
- **Complaint inspections** are conducted when complaints are received against establishments.

The frequency of routine inspections is determined by an establishment’s level of risk. OPH bases its risk levels on FDA’s recommended model in the 2001 Food Code<sup>5</sup> using the following criteria:

- Type of operation, including the methods and extent of food preparation, storage, and service
- Hazards associated with the particular foods that are prepared, stored, or served
- Whether the population served is a highly susceptible one (i.e., elderly).

Exhibit 1 provides examples of establishments for each risk category.

**Exhibit 1:  
Examples of Establishments and  
Inspection Frequency and  
Percentage of Current  
Establishments in Louisiana by  
Risk Category**

- **Risk Category 1:** Popcorn and soda booths, concession stands, convenience store delis with non-potentially hazardous food. *Inspected once per fiscal year*
- **Risk Category 2:** Smoothies, chicken only, coffee, ice cream shops. *Inspected twice per fiscal year*
- **Risk Category 3:** Fast food, limited advance preparation. *Inspected three times per fiscal year*
- **Risk Category 4:** Caterers, cafeterias, hotel kitchens, fine dining, full-service restaurants, schools, hospitals, and nursing homes. *Inspected four times per fiscal year*

**Enforcement Process.** OPH enforces compliance with the state’s sanitary code when violations are identified during inspections. State law and the sanitary code contain various enforcement actions, including penalties that OPH can assess to establishments found to be in non-compliance. Over the past three fiscal years, OPH has identified nearly 450,000 violations in establishments. OPH classifies violations as either “critical” or “non-critical.”

- **Critical violations** are those that may directly contribute to food contamination or illness. Examples of critical violations include food stored at improper temperatures, poor employee hygiene, no water, chemical contamination, and sewage backup. Of the 444,825 violations cited from FY 2009 to FY 2011, 88,290 (20%) were critical.

<sup>5</sup> OPH has not adopted the code, but uses provisions of the 2001 Food Code and its 2003 supplement as a guide.

- ***Non-critical violations*** are not directly related to the cause of foodborne illness, but if left uncorrected, could become critical. Examples of non-critical violations are soap and paper towels not provided in the lavatory, food not stored in a clean covered container, and outside waste receptacles not kept closed. Of the 444,825 violations cited from FY 2009 to FY 2011, 356,535 (80%) were non-critical.



## **Objective: Does OPH's Retail Food Program prevent and minimize foodborne illness in retail food establishments through its permitting, inspection, and enforcement processes?**

According to the State Epidemiologist, accurately quantifying foodborne illness cases is difficult because not all cases are reported, and many foodborne illnesses can also be transmitted through a means other than food served at a restaurant. Despite these difficulties, the State Epidemiologist estimates that Louisiana has 163,357 cases of foodborne illness annually. Of this number, he estimates that approximately 28,000 cases are from retail food establishments. However, only 2,930 are actually reported with 498 (17%) attributable to retail food establishments.

To evaluate OPH's role in preventing and minimizing foodborne illness in retail food establishments, we examined the Retail Food Program's permitting, inspection, and enforcement activities and identified weaknesses. We also identified weakness related to OPH management's oversight of the program. These issues are described below.

---

### **OPH issued permits to 13% of establishments that were cited with critical violations on their pre-opening inspection**

Before an establishment can open and operate, OPH is required to conduct a pre-operational inspection to verify that it is in compliance with the sanitary code. The sanitary code states that a permit shall be issued if the applicant has complied with all provisions of the sanitary code. However, from FY 2009 to FY 2011, OPH issued permits to some establishments that did not comply with all provisions of the sanitary code. Specifically, we found the following:

- Of 504 establishments with pre-opening inspections from FY 2009 to FY 2011, 152 (30%) had violations that were not corrected.
  - Of the 152, a total of 30 (20%) had at least one critical, uncorrected violation identified in their pre-opening inspections. Of these, four (13%) were issued permits to operate.
  - Of the 152, a total of 122 (80%) had at least one non-critical, uncorrected violation identified on their pre-opening inspection. Of these, 40 (33%) were issued permits to operate.

Allowing establishments to open with uncorrected violations may result in further non-compliance. Critical violations cited in this analysis include a lack of hot water, improper sewage disposal, issues with food packaging, and employee hygiene issues. One establishment

was issued a permit to operate with four non-critical uncorrected violations. Approximately one month later, this establishment was temporarily closed by the State Health Officer after an investigation of a possible foodborne illness.

**Recommendation 1:** OPH should ensure that permits are not issued to establishments with uncorrected violations identified during pre-operational inspections.

**Summary of Management’s Response:** DHH agrees in part with this recommendation. DHH states that it agrees with not permitting establishments with uncorrected critical violations. However, DHH states that if an establishment has a violation that does not cause imminent harm to the public, it may be permitted to open with assurances that the violation will be corrected. (See Appendix A, page A.2.)

---

**OPH did not conduct 81% of inspections of high-risk establishments in accordance with its risk model**

OPH adopted a risk-based model for inspection frequency based in part on FDA’s recommended model in the 2001 Food Code and its 2003 Supplement. As shown in Exhibit 1 of this report, this model assigns risk based on criteria, including the nature of the establishment, various hazards associated with food preparation, and the vulnerability of the population served. According to this model, high-risk establishments, which are most full-service restaurants, should be inspected four times per year. However, we found that 5,849 (81%) of 7,252 high-risk establishments were not inspected in accordance with this model.<sup>6</sup> On average, these establishments were only inspected twice per year in this three-year period. Exhibit 2 summarizes the number and percentage of high-risk establishments that were not inspected four times per year.

<b>Exhibit 2</b>			
<b>Number of High-Risk Establishments Not Inspected in Accordance with Risk Model</b>			
<b>FY 2009 to FY 2011</b>			
	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>
Number of High-Risk Establishments Not Inspected in Accordance with Model	1,839	1,931	2,079
Total Number of High-Risk Establishments	2,294	2,442	2,516
<b>Percentage of High-Risk Establishments with "Overdue" Inspections</b>	<b>80.2%</b>	<b>79.1%</b>	<b>82.6%</b>
<b>Source:</b> Prepared by legislative auditor’s staff using data from AIRS.			

<sup>6</sup> We limited our analysis to high-risk (i.e., category 4) facilities with a single 225 ecode because OPH arbitrarily populated some risk categories which resulted in unreliable data. For more information, see scope and methodology, page B.1.

One reason that OPH has not met its inspection targets is that it does not use a formal statewide process to plan and monitor inspections to ensure compliance with its risk model. OPH staff stated that sanitarians are periodically given a list of establishments without a recent inspection and are allowed to choose which establishments they will inspect that day. The list does not refer to an establishment's risk level, but only shows the date of the most recent food safety inspection. As a result, sanitarians are unable to select establishments based on level of risk, and higher risk establishments may be overlooked for extended periods of time.

In addition, OPH does not formally or consistently include compliance history as a factor in its risk model as recommended in both the 2001 and 2009 FDA Food Codes.<sup>7</sup> Compliance history is defined as those establishments with numerous or repeat violations and/or those establishments with a history of valid complaints. Using compliance history as an additional criterion for increasing or decreasing inspection frequency may help OPH improve the effectiveness and efficiency of inspections. For example, if compliance history is not considered, less compliant establishments may not be inspected as frequently as needed to protect public safety. Conversely, establishments that are more compliant may be unnecessarily inspected more often than necessary. Therefore, targeting establishments with prior violations would help ensure that OPH's resources are directed toward establishments that pose a higher risk to the public.

**Recommendation 2:** OPH should update its risk model using compliance history criteria established in the most recent FDA Food Code (2009).

**Summary of Management's Response:** DHH agrees with this recommendation and states it has a standardized mechanism in place to use compliance history to modify a retail food establishment's risk category. DHH also states that maintaining and strengthening the process of evaluation of risk categories allows OPH to be more consistent with that specific section of the 2009 Food Code. In addition, with the reorganization of the Sanitarian Services program and the provision of standardized training, OPH will assure that all sanitarians in the field across the state are aware that compliance history may be used to alter an establishment's risk category. (See Appendix A, pages A.2-A.3.)

**LLA's Additional Comments:** During our audit, DHH did not have a standardized mechanism that sanitarians used consistently to modify an establishment's risk category.

**Recommendation 3:** OPH should ensure that it inspects high-risk establishments in accordance with its chosen risk model.

**Summary of Management's Response:** DHH agrees with this recommendation and states that it has developed management tools, routines, and scheduling tools that will help them ensure that all inspections are completed in accordance with the recommended risk category schedule. (See Appendix A, pages A.3-A.4.)

---

<sup>7</sup> The Food Code is updated every four years and amended every two years via the Conference for Food Protection – a national conference of food safety regulators, food scientists, industry representatives, and members of academia.

---

## **OPH did not conduct 32% of re-inspections to ensure critical violations were corrected in accordance with its policy**

OPH's policy is to re-inspect establishments with critical, uncorrected violations. From FY 2009 to FY 2011, 13,099 of 84,247 routine inspections identified at least one critical uncorrected violation. However, for 4,200 (32%) of these 13,099 inspections, the establishment did not receive a re-inspection to ensure the critical violation was corrected. Since critical violations may directly impact food safety if left uncorrected, conducting re-inspections is important to protecting public health. In addition, conducting required re-inspections is necessary because not following up to ensure critical violations have been addressed may send a message to establishments that addressing violations is not considered important.

The Louisiana sanitary code also does not have specific or consistent criteria on timeframes for re-inspection. According to OPH, it tries to conduct a re-inspection within 24 hours although longer time periods may be negotiated with the establishment depending on the nature of the violation. According to the FDA 2009 Food Code, critical violations should be addressed immediately if possible, but no longer than 10 days. Non-critical violations should be addressed no longer than 90 days from being cited.

**Recommendation 4:** OPH should ensure that it conducts all required re-inspections in a timely manner to ensure that establishments have adequately addressed all violations.

**Summary of Management's Response:** DHH agrees with this recommendation and states that the management tools, routines, and scheduling tools developed will provide information needed to prioritize re-inspections for critical violations and integrate them into daily work assignments. (See Appendix A, page A.4.)

---

## **Despite the prevalence of violations, OPH rarely uses formal enforcement actions to address violations**

State law and the sanitary code allow for various formal enforcement actions including compliance orders, penalties, suspensions, injunctions, food seizures, arrest and prosecution. However, unless there is an imminent health hazard, which results in a permit suspension or a seizure of food, OPH's enforcement process consists of informally counseling and educating retail food establishments instead of using formal enforcement actions.

OPH cited nearly 450,000 violations from FY 2009 to FY 2011. However, during this time it issued only four retail food compliance orders and assessed penalties totaling approximately \$1,300 for two of these four compliance orders. OPH did not collect any of the penalties it assessed.

According to OPH, one reason it does not use compliance orders and penalties more often is that the process is too cumbersome. OPH's current compliance order process consists of 17 steps and requires actions by multiple OPH staff. According to OPH staff, because the

current enforcement process is lengthy, it prefers to resolve issues at the parish/regional level as much as possible. From FY 2009 to FY 2011, OPH regional staff conducted 964 enforcement conferences with establishments.<sup>8</sup> An “enforcement conference” is an informal meeting between the establishment and local OPH staff to address issues of non-compliance before formal enforcement actions are initiated. However, these local efforts consume limited staff resources and may not be effectively deterring non-compliance.

Unlike other states, OPH does not have criteria for what circumstances warrant enforcement actions. Although state law provides a range of enforcement actions for OPH to use, OPH has not developed formal criteria to define when certain actions should be issued. According to the 2009 FDA Food Code, states must have in place both the necessary statutory framework to include a broad-based, well-defined enforcement component and regulations that specify requirements within legal authorities. Examples of other states’ and municipalities’ criteria include the following:

- In **Mississippi**, an enforcement action will be issued if a follow-up inspection identifies continued noncompliance. In addition, a permit may be suspended if an establishment has six or more critical items identified in the last two routine inspections.
- In **South Carolina**, permits may be suspended and/or revoked for a number of reasons, including poor results in three consecutive routine inspections.
- In **Florida**, a follow-up inspection must be completed prior to recommending enforcement action. Upon receipt of the enforcement action, establishments can choose to request a hearing or pay a reduced (settled) fine without requesting a hearing.
- In the **City of Nashville, Tennessee**, failure to correct any violations of critical items within 10 days may result in permit suspension. Repeat violations of the identical critical item category may result in permit revocation.

**Recommendation 5:** OPH should develop specific criteria for when and how to use different enforcement actions. This will help strengthen OPH’s enforcement process and ensure that enforcement actions are applied consistently and fairly.

**Summary of Management’s Response:** DHH agrees with this recommendation and states that it will provide training on how to consistently apply enforcement procedures. (See Appendix A, page A.4.)

**Recommendation 6:** OPH should streamline its compliance order process.

**Summary of Management’s Response:** DHH agrees with this recommendation and states that it has mapped the compliance order process to identify redundancies and areas conducive to streamlining. (See Appendix A, pages A.4-A.5.)

---

<sup>8</sup> For all Retail Food ecodes, including 225.

---

## **Because 33% of establishments had repeat critical violations, OPH's enforcement process does not appear to deter non-compliance**

Approximately 33% of establishments had repeat critical violations from FY 2010 to FY 2011. In FY 2010, OPH identified 32,213 critical violations across 9,095 establishments. In FY 2011, 2,991 (33%) of these establishments had repeat critical violations on their inspection. For example, the violation "raw animal food is not separated from ready to eat food or is placed, displayed or stored above ready to eat food" was cited 6,688 times across 4,030 establishments from FY 2009 to FY 2011. A total of 591 (15%) of these establishments were cited for three or more instances of this violation during the three-year period, and two establishments had 15 occurrences of this violation. However, OPH has not routinely prescribed any penalties or other consequences for establishments with repeat violations.

According to OPH, its goal is to get establishments to correct instances of noncompliance on-the-spot. However, multiple instances of repeat violations show that establishments may correct violations on-the-spot but have not necessarily changed the behavior which is causing violations to occur. According to the 2009 FDA Food Code, repeat violations should trigger further compliance and enforcement actions. The Food Code also provides guidance on administrative and judicial actions for establishments with serious or repeat violations. Therefore, OPH should also use formal actions or penalties to reinforce the importance and necessity of compliance.

### **Charging re-inspection fees in lieu of penalties may help deter non-compliance.**

OPH currently does not have the authority to charge a fee to establishments when it is required to conduct a re-inspection to ensure critical violations have been addressed. These inspections can be costly in terms of resources, especially when an establishment continues to have violations. Some states and municipalities address this by charging establishments for re-inspections only in certain instances. For example, Wisconsin charges a re-inspection fee of \$100 if the re-inspection finds that the violation has not been corrected. Kansas City charges a \$75 re-inspection fee that can increase from \$100 to \$250 if a second re-inspection is needed.

Using actual re-inspections conducted by OPH from FY 2009 to FY 2011, we estimated how much OPH could have collected if it had the authority to charge \$50 for one re-inspection and \$100 if establishments have two or more re-inspections within one year. Exhibit 3 on the following page summarizes this information.

<b>Exhibit 3 Hypothetical Re-inspection Fee Revenue FY 2009 to FY 2011</b>				
	<b>Total Number of First Re-inspections</b>	<b>Hypothetical Re-inspection Fee Revenue (\$50)</b>	<b>Total Number of Second or More Re- inspections</b>	<b>Hypothetical Potential Re- inspection Fee Revenue (\$100)</b>
FY 2009	2,593	\$129,650	1,335	\$133,500
FY 2010	2,521	126,050	1,292	129,200
FY 2011	2,033	101,650	985	98,500
Revenue Generated		357,350		361,200
<b>Total Revenue Generated</b>	<b>\$718,550</b>			
<b>Source:</b> Prepared by legislative auditor's staff using inspection data from Automated Inspection and Reporting System.				

Charging fees for re-inspections may be especially useful as an enforcement tool because, as shown earlier, OPH does not often penalize establishments even when they find numerous violations. Therefore, charging a re-inspection fee may be more palatable to establishments than penalties and may also create a financial incentive for establishments to comply with the sanitary code.

**Recommendation 7:** OPH should develop a penalty or some other consequence for establishments with repeat critical violations.

**Summary of Management's Response:** DHH agrees with this recommendation. The compliance order process currently allows for monetary penalties if an establishment remains non-compliant. In addition, management will consult with DHH Legal on the possibility of additional consequences for non-compliance beyond the existing compliance order process. (See Appendix A, page A.5.)

**Recommendation 8:** OPH should consider charging a re-inspection fee and develop criteria for when the fee will be charged.

**Summary of Management's Response:** DHH does not agree with this recommendation and states it does not have the legal authority to initiate fees. (See Appendix A, page A.5.)

**LLA's Additional Comments:** DHH does not have the legal authority to initiate fees without legislative approval but could work with the legislature to develop fees for re-inspections.

---

## Inspection results not fully disclosed to the public

Since August 2011, OPH's policy has been to post its sanitary inspection results online at Eat Safe Louisiana. The goal of this website is to enable consumers to make informed decisions regarding food safety in retail food establishments. However, we identified missing inspections and other issues that impact the completeness of inspection results posted to the website.

**OPH lacks a process to ensure that all inspections results are uploaded to the website.** Once an inspection is complete, sanitarians are required by policy to upload their inspection report into an information system called the Automated Inspection and Reporting System (AIRS). AIRS data is then uploaded to the website on a nightly basis. Within seven days, inspection results are formally posted on the website. However, we found that OPH has not developed a process to ensure all inspections are uploaded in a timely manner. As a result, we found of the 47 retail food inspections we observed, six (13%) inspections conducted by the same sanitarian were not uploaded to the site three weeks after the inspection. We also found several months where inspection reports were missing for this same sanitarian. Although we only found this occurred for one sanitarian in our sample, OPH cannot determine the prevalence of this issue because it lacks a process to ensure all inspections are uploaded to the website.

**Some inspection results are never uploaded because they were not linked to a permit number.** When sanitarians conduct pre-operational inspections to permit a new establishment, these inspections do not contain a permit number because one has not yet been assigned. Once a permit number has been assigned, sanitarians must manually map pre-inspection results to the permit in AIRS. However, if a sanitarian fails to or is unable to map the inspection into AIRS, inspection results are not uploaded to the website. According to OPH, there are approximately 3,140 inspections that are not linked to permits and not uploaded to the website.

**The website does not provide all inspection results for establishments.** Eat Safe Louisiana only displays up to three inspection reports per retail food establishment. However, individual inspection reports are created for each distinct operation of an establishment, and approximately 6% of currently permitted establishments are comprised of four or more operations. For example, a sporting arena or theme park may have multiple restaurants and/or concession stands, such as Blue Bayou Water Park in Baton Rouge with 29 different operations. Each operation is individually inspected, but only three inspection reports are available on Eat Safe Louisiana at any given time.

In addition, having only three inspections posted on the website does not allow users to see comprehensive information on the compliance history of an establishment. Some establishments have multiple violations and inspections in a year. For example, one restaurant has had 15 inspections with 345 violations over the last three years. However, the website currently<sup>9</sup> only shows the last three inspections which show only 29 violations. Exhibit 4 summarizes the top three establishments in each region with the highest number of violations from FY 2009 to FY 2011. However, the public would not know this information because only

---

<sup>9</sup> As of July 23, 2012



the last three inspections are included. This limitation can prevent users from making informed decisions with respect to many retail food establishment operations.

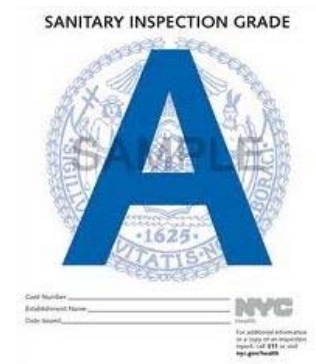
<b>Exhibit 4</b>				
<b>Restaurants with Most Violations by Region</b>				
<b>FY 2009 to FY 2011</b>				
<b>Name</b>	<b>Parish</b>	<b>Total Violations</b>	<b>Critical</b>	<b>% Critical</b>
<b>Region 1 - Metropolitan</b>				
MANDARIN HOUSE	Jefferson	282	88	31.2%
SUPER CHINA BUFFET	Jefferson	233	81	34.8%
ASIAN SUPER BUFFET	Jefferson	232	67	28.9%
<b>Region 2 - Capitol</b>				
THE GREAT WALL RESTAURANT	East Baton Rouge	345	76	22.0%
KING BUFFET	East Baton Rouge	220	59	26.8%
V'S CAFE	East Baton Rouge	163	38	23.3%
<b>Region 3 - Teche</b>				
GROUND PATI OF THIBODAUX	Lafourche	229	39	17.0%
BAYOU DELIGHT	Terrebonne	225	32	14.2%
CAFE CREOLE	Terrebonne	217	26	12.0%
<b>Region 4 - Acadian</b>				
ROYAL PANDA CHINESE RESTAURANT	Lafayette	687	133	19.4%
CHARLIES SEAFOOD RESTAURANT	Lafayette	566	102	18.0%
CROWN PLAZA LAFAYETTE SOUTH	Lafayette	532	98	18.4%
<b>Region 5 - Southwest</b>				
HONG KONG	Calcasieu	236	42	17.8%
CASA OLE #48	Calcasieu	224	56	25.0%
PITT GRILL	Calcasieu	216	69	31.9%
<b>Region 6 - Central</b>				
FERNANDO'S	Avoyelles	147	33	22.4%
SUBWAY #14702	Avoyelles	143	22	15.4%
PANDA BUFFET	Avoyelles	140	27	19.3%
<b>Region 7 - Northwest</b>				
SUPERIOR GRILL	Caddo	110	29	26.4%
EL GIRO MEXICAN RESTAURANT	Sabine	106	20	18.9%
DOWN HOME ON TOLEDO	Sabine	106	25	23.6%
<b>Region 8 - Northeast</b>				
TONY'S RESTAURANT AND 50'S GRILL	Ouachita	381	96	25.2%
BARNHILL'S COUNTRY BUFFET	Ouachita	343	67	19.5%
CATFISH CABIN	Ouachita	338	48	14.2%
<b>Region 9 - Southeast</b>				
GOLDEN DRAGON	St. Tammany	200	57	28.5%
SOUTH SEAS CHINESE RESTAURANT	St. Tammany	146	37	25.3%
SICILY'S ITALIAN BUFFET	St. Tammany	131	31	23.7%
<b>Source:</b> Prepared by legislative auditor's staff using data from AIRS.				

**OPH does not track or publicly report on establishments that voluntarily shut down because of non-compliance.** OPH allows non-compliant establishments to voluntarily shut down until compliance is achieved to remove imminent danger to those who frequent the establishment. As stated on page 13, inspections are posted on the Eat Safe website. Information regarding voluntary shutdowns are included in the inspection notes. However, OPH does not make inspection notes available on the Eat Safe website. In addition, OPH does not track when an establishment voluntarily shuts down, so we were unable to tell how often these occurred. In addition, OPH allows these establishments to shut down without any explanation to the public on the reasons they have shut down. For example, according to OPH, some establishments will put a sign “closed for renovations” on their door. If OPH continues to allow establishments to voluntarily shut down, it needs to track these occurrences and require that establishments post that they are temporarily shut down due to non-compliance with the sanitary code.

**To increase transparency, OPH could calculate numerical scores or grades or post actual inspection results.** States primarily use two methods to publicly disclose the results of their inspections. Some states such as Florida and Oklahoma make inspection results available to the public through a website like Louisiana. Other states post letter grades or numerical scores based on the severity of violations identified on inspections. States that use this method include Mississippi, Alabama, North Carolina, South Carolina, and Georgia. Some cities also use this method, including New York, Los Angeles, and Las Vegas.

Although Louisiana does not currently have a grading or rating system, OPH attempted to implement a rating system in 2005 called the Pelican Rating System. This system rated establishments from “poor” to “superior” depending on the number of violations identified. However, according to OPH, this system had technical issues which produced erroneous results and was shut down.

There are several advantages to using a grading or scoring system. One advantage is that the public can easily view and understand the implications of inspection results without having to go to a website. Grades may also help establishments improve their compliance history. Because grades may influence the public’s decision about where to eat, it may give establishments more of an incentive to comply. For example, New York City saw a decrease in the prevalence of certain violations since grading and has seen an increase in the percentage of establishments earning an “A” grade.



According to the New York City Health Department, grading has also decreased the incidence of foodborne illness. New York City estimated that *Salmonella* cases decreased by 14% in 2011, which is the lowest seen in the city in 20 years. In Los Angeles, one study found that grading was associated with a 13% decrease in the number of foodborne-disease hospitalizations in Los Angeles County in the year following implementation of the program.

Although there are benefits of using a grading or scoring system, there are also identified disadvantages. For example, an establishment’s inspection report covers only a single point in

time and may not reflect the overall culture of food safety at the restaurant. In addition, the public may interpret inspection scores as an overall indicator of quality. Finally, according to OPH, the use of grades or scores may result in establishments pressuring inspectors to change scores.

If OPH decides to use grades, scores, or to post actual inspection results, OPH should first ensure that it improves the consistency of its inspections. Unlike other states, OPH no longer uses a standardization process to train inspectors to ensure inspections are conducted consistently and comprehensively. Our observations of 47 retail food inspections noted various inconsistencies among regions. In addition, we also interviewed five restaurant managers who also noted some inconsistencies among inspectors.

**Recommendation 9:** OPH should ensure that all inspection results are uploaded to the website in a timely manner.

**Summary of Management's Response:** DHH does not agree with this recommendation but states that it expects all inspections to be uploaded to the Eat Safe website within seven days. In addition, it states that when Eat Safe Louisiana was implemented, an administrative decision was made to post each establishment's last three inspections. OPH is currently evaluating the feasibility of modifying the system to allow posting of the last 10 inspections and to add the inspection history for each operation within an establishment. (See Appendix A, pages A.5-A.6.)

**Recommendation 10:** OPH should track those establishments that voluntarily shut down and require that establishments post the true reason for the closure.

**Summary of Management's Response:** DHH agrees with this recommendation and states that the inspection that preceded the closure is posted on the Eat Safe website so the public is provided with information regarding the inspection results. (See Appendix A, page A.6.)

**LLA's Additional Comments:** Although the inspection is posted, the inspection notes, which include details regarding the voluntary closure, are not posted. In addition, we recommend that the reasons for closure be posted on the establishment's premises.

**Recommendation 11:** OPH should re-implement a formal standardization program for its sanitarians.

**Summary of Management's Response:** DHH agrees with this recommendation and states that Louisiana has signed on to the 10 State Standards with the FDA. In turn, the FDA will assist in sanitarian training to ensure standardization. DHH is also reorganizing which will increase standardization with all sanitarians reporting to one central administrator. (See Appendix A, page A.6.)

**Recommendation 12:** To increase transparency and to improve the public's ability to easily view inspection results, OPH should consider adopting grades or numerical

scores for establishments, with these results conspicuously posted on an establishment's premises. If grading or scoring is not adopted, then OPH should consider requiring establishments to post inspection reports on their premises.

**Summary of Management's Response:** DHH agrees with this recommendation and states that it is working with its Legal Section to analyze the pros and cons of requiring retail food establishments to post their most recent complete inspection at a visible location on their premises. (See Appendix A, pages A.6-A.7.)

---

## **OPH management should improve its oversight of the Retail Food Program through reorganization, revised permit fees, and improved use of data**

OPH lacks the necessary tools that would enable it to better manage its regulatory activities. Management is responsible for ensuring its activities are conducted in accordance with the state sanitary code, that activities are properly funded, and that it uses data to monitor the program's performance. However, we identified weaknesses in OPH's management of the program, which are described below.

**Because of its current organizational structure, the Retail Food Program cannot hold sanitarians accountable to ensure they conduct required activities.** OPH's current organizational structure does not allow for proper oversight of regulatory activities. The Retail Food Program, which is charged with programmatic oversight, cannot control or direct the activities of field sanitarians that carry out the program. As a result, the Retail Food Program cannot ensure the sanitarians conduct required activities. According to OPH, it plans to change this structure in FY 2013.

**Unlike other states, OPH's permit fees are not based on the size of the establishment and do not cover all services provided.** OPH currently charges all retail food establishments, regardless of size, a \$100 initial permit fee<sup>10</sup> and a \$100 renewal fee each year. Other states base their permit fee on the cost to the state to regulate the establishment. For example, some states base the permit fee on the number of seats, the number of employees, or the square footage in an establishment, and others base the fee on the amount of food sales. These types of categories help ensure establishments pay a fee proportionate to the amount of resources needed to regulate them.

Also, OPH does not currently have the authority to charge fees for plans review. The sanitary code requires that establishments submit plans whenever a food establishment is constructed, substantially renovated, or ownership or occupancy classification changes. These plans must be reviewed by sanitarians for compliance with the sanitary code and approved by OPH before construction or renovations occur. However, OPH does not currently have the

---

<sup>10</sup> The permit fee for grocery stores ranges from \$75 to \$500 based upon self-reported revenue from sales. In addition, if a retail food establishment has more than one permit, additional permits are discounted from \$50 to \$75 depending on the number of permits.

authority to charge a fee for reviewing these plans. Most of the other states we surveyed charge a fee for plans review. Some states charge a flat fee and other states charge based on the amount of hours it takes to review plans. Exhibit 5 summarizes the permit fees and plans review fees charged in other states.

Exhibit 5 Retail Food Establishment Permit and Plans Review Fees in Other States Compared to Louisiana			
State	Permit Fee Structure	Permit Fee	Plans Review Fee
Louisiana	Flat	\$100 <sup>11</sup>	\$0
Florida	Based on seats	\$262-\$357	\$150
Alabama	Based on seats	\$50-\$400	\$50-\$100
Arkansas	Flat	\$35	1% of total construction cost up to \$500
Colorado	Based on seats	\$255-\$310	\$100 application fee plus a review fee up to \$580
Oklahoma	Flat, although initial fee is larger	\$350 (initial)/\$250 (renewal)	\$200
Texas	Based on food sales	\$250-\$750*	Varies by municipality**
Mississippi	Based on risk level	\$15-\$150	\$0
*Valid for two years **In Texas, plans review is conducted at the local level, but permits are issued at the state level. <b>Source:</b> Prepared by legislative auditor’s staff using information provided by other states’ websites and staff.			

If OPH were given the authority to increase its permit fees based on the size of the establishment charged for plans review, OPH could potentially generate approximately \$1.3 million of additional revenue per year.<sup>12</sup> According to OPH, its fee structure for retail food has not changed since 1989. Since then, DHH has conducted analysis internally regarding fees charged in other states.

**OPH’s programmatic database that tracks internal program operations is outdated and contains unreliable and incomplete data.** OPH primarily uses the Sanitarian Events Tracking System (SETS) to track and manage its regulatory processes. This system should help OPH manage its processes, including ensuring all required activities are performed efficiently. However, the current system does not allow OPH to use and analyze data or generate useful reports to help monitor and manage its regulatory activities. As a result, OPH was not aware that many regulatory activities, such as inspections and re-inspections, were not being performed as required by policy and/or law.

<sup>11</sup> As noted earlier, if a retail food establishment has more than one permit, additional permits are discounted from \$50 to \$75 depending on the number of permits.

<sup>12</sup> Assumes permit fees range from \$100 to \$300 based on square footage and a \$100 plans review fee.

One reason OPH cannot use this system effectively is that OPH lacks formal procedures to ensure data is entered accurately and completely. For example, we found the following issues related to data:

- 9,274 permits were not assigned a risk category (which dictates the frequency of inspections for the permit).
- 4,237 permits were not assigned an “ecode” that designates the type of operations provided by a permitted establishment (i.e., bar, grocery store, restaurant).
- Approximately 900 payments were incorrectly posted to the wrong permit, requiring a manual correction.

In addition, some reports generated from SETS to help monitor permits and the collection of fees were not accurate. Although many of these issues could be addressed with changes to the data system, the current system was developed in 2000 and the maintenance contract currently in place does not allow DHH to make changes to this system to better manage its regulatory activities.

OPH also uses SETS to track its enforcement activities. This system houses information on how long certain activities took as well as how many occurred. However, the system allows sanitarians to erroneously enter information on enforcement activities. As a result, OPH cannot reliably track the following enforcement activities:

- Permits revoked and reinstated
- Number of complaints investigated
- Number of seizures (seizures of food)
- Number of destructions (destruction of food)
- Number of foodborne outbreaks investigated

OPH recognizes the need for a new system. In 2008, it developed a Request for Proposal (RFP) for an off-the-shelf system that would integrate all sanitarian services systems. It received proposals ranging from \$685,000 to \$1.2 million. However, because of budget issues, the project was never funded.

**Recommendation 13:** OPH should reorganize its structure to ensure that Sanitarian Services has appropriate authority and oversight over field sanitarians.

**Summary of Management’s Response:** DHH agrees with this recommendation and states that a departmental reorganization of Sanitarian Services has begun and is scheduled to be completed by November 15, 2012. (See Appendix A, page A.7.)

**Recommendation 14:** OPH should consider expanding its current variable permit fee structure, as currently in place for grocery stores, based on the size of the establishment or the amount of sales revenue it generates.

**Summary of Management's Response:** DHH agrees with this recommendation and states that it is interested in looking at a more equitable fee structure of Louisiana's businesses. Currently, DHH does not have the legal authority to initiate a change in the application of fees without legislative approval. (See Appendix A, page A.7.)

**Recommendation 15:** OPH should consider developing a fee for construction plans review to cover the cost of this service.

**Summary of Management's Response:** DHH agrees with this recommendation and states that it is interested in looking at its current fee structure. Currently, DHH does not have the legal authority to initiate a change in the application of fees without legislative approval. (See Appendix A, pages A.7-A.8.)

**Recommendation 16:** OPH needs a new Sanitarian data system that captures permits, monitoring, enforcement actions, and historical information. Until this is accomplished, OPH should develop processes to ensure that complete and reliable permit and enforcement data is entered into SETS.

**Summary of Management's Response:** DHH agrees with this recommendation and states that, while the acquisition of a new software application is cost prohibitive at this time, OPH is continuing to explore options and sources of revenue for updating or purchasing software applications that will capture complete data and allow easier analysis. (See Appendix A, page A.8.)

## **APPENDIX A: MANAGEMENT'S RESPONSE**





**State of Louisiana**  
Department of Health and Hospitals  
Office of Public Health

October 26, 2012

Daryl G. Purpera, CPA, CFE  
Legislative Auditor  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Dear Legislative Auditor Purpera:

The Louisiana Department of Health and Hospitals (DHH) thanks you and your staff for your efforts in preparing the "Department of Health and Hospitals Office of Public Health Regulation of Food Safety in Retail Food Establishments" report. As we discussed in the request of this audit in partnership with you, this report will assist us in making necessary changes to this program and to further ensure that retail food establishments are meeting the required standards in order to protect the health and well-being of the residents and visitors of Louisiana.

Per your request, the Department has reviewed this report and each of your recommendations. For each recommendation, we have indicated if we agree or disagree as you directed and we identify the corresponding corrective action we are taking or have taken as a result of this review.

Earlier this year, the DHH Office of Public (OPH) contacted the Department of Public Safety (DPS) for assistance in conducting a Lean Six Sigma (LSS) project entitled "Public Health Sanitation Overhaul," which would focus on retail food, on-site waste water, and building and premises inspections. This area was identified by us as an area to improve performance and maximize staff resources. LSS is a business management technique that seeks to improve the quality of a service or product and increase the efficiency and effectiveness of delivering that product or service. In the mid-1980s, Motorola developed the Six Sigma business management strategy. General Electric, under the leadership of Jack Welch, expanded the acceptance and notoriety of this management technique. Six Sigma is now used in many industries from production and manufacturing to healthcare. LSS seeks to eliminate waste and variability in a process. Business problems are evaluated using data and data-driven solutions are not implemented unless the data supports their implementation. When a solution is implemented, it is evaluated to ensure that it directly addresses the problem and that it does not cause any unforeseen issues upstream or downstream.

In February of 2011, OPH, with the support and expertise of the LSS Engineers from DPS, launched the Public Health Sanitation Overhaul project. The primary goals include improving oversight and regulation of retail food establishments, maximizing productivity and increasing the standardization of operations in Sanitarian Services. This project is specifically focused on increasing the timeliness of food, on-site waste water, and building and premise inspections throughout the state and improving the management system to ensure that all establishments and institutions that require inspections receive inspections as scheduled, with increased responsiveness and consistency. OPH formed a team comprised of Sanitarian Services senior and field staff, OPH Leadership and the LSS experts from the Department of Public Safety (DPS) to address these issues. The LSS project in Sanitarian Services will be completed in December 2012 and new, stronger management tools and routines will be implemented statewide. LSS is an on-going continuous improvement process. The processes in Sanitarian Services will continue to be monitored and additional improvements will be made as necessary.

The information following includes each of your recommendations and the corresponding response and corrective action.

**Recommendation 1: OPH should ensure that permits are not issued to establishments with uncorrected violations identified during pre-operational inspections.**

DHH agrees with this recommendation, in part. In regard to the 4 (13%) restaurants that were permitted with a critical violation, we do agree with not permitting establishments with uncorrected critical violations, and OPH will reduce the number of establishments with critical violations that are issued permits to zero. However, OPH has consulted with DHH Legal counsel, who advises that Sanitary Code Part XXIII §503 does not prohibit issuing permits to establishments with uncorrected violations. OPH Sanitarians are trained to identify potentially hazardous situations and to act appropriately to protect the safety and wellbeing of the public. OPH Sanitarians must have an educational background that includes college-level coursework in biological sciences, are required to complete an extensive training and registration program, and are overseen by the Louisiana State Board of Examiners for Sanitarians. Permitting of an establishment is completed by a qualified Sanitarian. If an establishment has a violation that does not cause imminent harm to the public, it may be permitted to open with assurances that the violation will be corrected. Non-critical violations include minor issues such as lack of paper towels in the bathroom, garbage cans without lids, employees' not wearing hair restraints and cleanliness of non-food contact surfaces.

**Recommendation 2: OPH should update its risk model using compliance history criteria established in the most recent FDA Food Code (2009).**

DHH agrees with this recommendation and is currently complying with this recommendation. Sanitarian Services does have a standardized mechanism in place to use *compliance history* to modify a retail food establishment's risk category. Sanitarians may request to change a risk category based on

specific criteria including the inspection history. The field sanitarian's judgment and experience with a specific establishment makes them uniquely qualified to recommend a risk category change. Sanitarian Services Administration will review the request and make a final decision using information provided from the sanitarian assigned to that establishment. A thorough analysis of the inspection history, the type of establishment and the rationale for changing the establishments risk category is conducted to identify if the request to implement the change is appropriate. Maintaining and strengthening the process of evaluation of risk categories allows OPH to be more consistent with that specific section of the 2009 Food Code. In addition, with the re-organization of the Sanitarian Services program and provision of standardization training discussed below, OPH will assure that all sanitarians in the field across the State are aware that compliance history may be used to alter an establishment's risk category.

**Recommendation 3: OPH should ensure that it inspects high-risk establishments in accordance with its chosen risk model.**

DHH agrees with this recommendation. As stated previously, in February 2011, a LSS project was implemented in the Center for Environmental Health Sanitarian Services program. This project addresses improving the completion of all retail food inspections per the established schedule in a timely manner. To address retail food inspections that have not been completed per the established risk criteria, management tools and routines were developed through a thorough analysis of work processes, data and 46 field visits in which the team participated in actual inspections. These tools will allow the manager to view what has been completed each day and to ensure that performance targets are being achieved. The tools and routines that were developed include establishing requirements for a daily meeting between managers and field sanitarians to evaluate the daily assignments, to review what was completed the day before, and to review any critical issues that may prevent the completion of the day's assignments. Further, compliance with inventory completion will be placed into each sanitarian's evaluation. In addition, a daily report that details what was completed each day is available and provided to the Regional Sanitarian and Central Office Leadership.

A standardized scheduling tool was also developed. The scheduling tool incorporates the retail food establishment inventory with the risk category and inspection due dates. It calculates a priority schedule that drives the daily assignments of the field sanitarians. The manager is able to review the inventory of inspections that are currently due, the inspections that are past due, and to prioritize the day's inspection activities.

These tools will provide the managers with the information that they need to ensure that all inspections are completed in accordance with the recommended risk category schedule.

This audit covered fiscal years 2009 through 2011. OPH conducted an analysis of recent data to determine if improvements had occurred as a result of the agency's performance improvement efforts focused on sanitarian services. The data revealed that from January 2012 to October 16<sup>th</sup>, 2012, OPH had not conducted 73 percent of category 4 retail food establishments according to the risk model, which recommends 4 inspections per year. This represents an improvement of nearly 10 percent. By utilizing the management tools and routines that have been developed through the LSS project, OPH has a goal to achieve 100 percent compliance in completing retail food establishment inspections per the established risk criteria schedule by June 30, 2013.

**Recommendation 4: OPH should ensure that it conducts all required re-inspections in a timely manner to ensure that establishments have adequately addressed all violations.**

DHH agrees with this recommendation. According to LAC Title 51 part XXIII, Retail Food Establishment inspections are only required for a pre-opening inspection. Although inspections of retail food establishments are only required for pre-opening, OPH strives to achieve an inspection model that strengthens the regulation of food safety in Louisiana. OPH utilizes provisions of the 2001 Food Code as a guide for establishing inspection frequency criteria. The management tools and routines that have been implemented through the LSS project will help to ensure that the all retail food inspections are completed per the established risk category schedule.

The scheduling tool that was recently developed as part of the LSS project will be used to schedule re-inspections with critical and non-critical violations. This will provide managers with the information that they need to prioritize re-inspections for critical violations and integrate them into the daily work assignments.

**Recommendation 5: OPH should develop specific criteria for when and how to use different enforcement actions. This will help strengthen OPH's enforcement process and ensure that enforcement actions are applied consistently and fairly.**

DHH agrees with this recommendation. Training on how to consistently apply enforcements procedures will be provided to Field Sanitarians. The reorganization of sanitarian services will allow for a single staff member to be assigned as the compliance order coordinator. This position will be responsible for the consistency and accuracy of the process and related documents. This position will also be responsible for tracking and monitoring the path of the compliance order from the field through enforcement.

**Recommendation 6: OPH should streamline its compliance order process.**

DHH agrees with this recommendation. The Compliance Order process has been analyzed as part of the Public Health Sanitation Overhaul project. Opportunities for streamlining this process have been identified and will be implemented. The LSS team has consulted with the Assistant Secretary and the State Health Officer to ensure the process is efficient and accomplishes the goal of protecting the public from food borne illness. The compliance order procedure has been process mapped to identify redundancies and areas conducive to streamlining

**Recommendation 7: OPH should develop a penalty or some other consequence for establishments with repeat critical violations.**

DHH agrees with this recommendation. Penalties can be assessed when an establishment is not compliant. Field sanitarians work closely with establishment owners to ensure violations are corrected and to educate the owners as to the seriousness of the violation. OPH does not have the authority to charge additional penalties for non-compliance. However, the compliance order process does allow for monetary penalties if the establishment remains non-compliant. These penalties can reach a maximum of \$10,000. As stated previously, OPH is designating one administrative staff member in central office to oversee the compliance order process and all sanitarians will be trained on how to consistently apply enforcements procedures. In addition, OPH will consult with DH Legal on the possibility of additional consequences for noncompliance.

**Recommendation 8: OPH should consider charging a re-inspection fee and develop criteria for when the fee will be charged.**

DHH does not agree with this recommendation. OPH does not have the legal authority to initiate fees.

**Recommendation 9: OPH should ensure that all inspection results are uploaded to the website in a timely manner.**

DHH does not agree with this recommendation. When Eat Safe Louisiana was implemented, an administrative decision was made to post each establishment's last three inspections. The system will allow a maximum of 10 inspections to be posted for each establishment before the speed of the system is compromised. OPH is currently evaluating the feasibility of modifying the system to allow posting of the last 10 inspections and also exploring if it is possible to add the inspection history for each operation within an establishment to address entities such as Blue Bayou Water Park described in the audit report. Although the complete history of all retail food establishment inspections is not

currently available on the Eat Safe Louisiana website, the complete inspection history is available upon request.

All inspections are expected to be uploaded to the Eat Safe web site within seven days, and re-inspections are to be uploaded in one day. All sanitarians will be provided with new electronic tablets that will allow all field inspections to be completed electronically. This will eliminate the need for duplicate data entry and will reduce the lag time for entering inspection results in Eat Safe Louisiana.

**Recommendation 10: OPH should track those establishments who voluntarily shut down and require that establishments post the true reason for the closure.**

DHH agrees with this recommendation. If an establishment voluntarily closes they are immediately addressing the identified violations through that closure and are eliminating any threat to the public. The inspection that precedes the closure is posted on the Eat Safe website so the public is provided with information regarding the inspection results. Allowing a facility to voluntarily close until critical issues are addressed immediately prevents unsafe food from being served to the public.

**Recommendation 11: OPH should re-implement a formal standardization program for its sanitarians.**

DHH agrees with this recommendation. Louisiana has signed on to the 10 State Standards with the Federal Food and Drug Administration (FDA). This will allow OPH to access training from the FDA. The FDA will assist in training 9 sanitarians, one in each region, on risk-based inspections. These sanitarians will in turn train all sanitarians in their region to ensure standardization. A departmental re-organization has also been implemented. This re-organization will increase standardization with all sanitarians reporting into one central administrator rather than 9 different administrators.

**Recommendation 12: To increase transparency and to improve the public's ability to easily view inspection results, OPH should consider adopting grades or numerical scores for establishments, with these results conspicuously posted on an establishment's premises. If grading or scoring is not adopted, then OPH should consider requiring establishments to post inspection reports on their premises.**

DHH agrees with this recommendation. In 2005, a rating system, the Pelican System, was implemented but it was never fully operational due to technical issues. Implementing a system using ratings does not provide the public with the inspection details that the Eat Safe website does. We

favor posting the actual inspection in the retail food establishment, which would provide the public with the detailed inspection within the restaurant. OPH is analyzing, in concert with the DHH Legal team, the pros and cons of requiring retail food establishments to post their most recent complete inspection at a visible location on their premises.

**Recommendation 13: OPH should reorganize its structure to ensure that Sanitarian Services has appropriate authority and oversight over field sanitarians.**

DHH agrees with this recommendation. A departmental re-organization of Sanitarian Services has begun and is scheduled to be completed by November 15, 2012. With the reorganization, all Sanitarians will report to the Central Administrative Office. This re-organization will give the Central Office managerial oversight of all sanitarians statewide rather than having the field sanitarians report to nine different administrators who did not report to the Chief Sanitarian.

The Public Health Sanitation Overhaul project has created tools for monitoring performance down to the individual sanitarian level. Management will have a clear view of the daily activities that are being performed in the field. Production standards have been developed and increased performance accountability is required. The new tools will make it easy to identify those sanitarians not meeting expectations and corrective actions will be applied as necessary.

**Recommendation 14: OPH should consider expanding its current variable permit fee structure, as currently in place for grocery stores, based on the size of the establishment or the amount of sales revenue it generates.**

DHH agrees with this recommendation. The Department has not undertaken a systematic review of our fee structure recently. While we have implemented innovations in making inspection results electronically available and introducing new management tools, we are also interested in looking at a more equitable fee structure of Louisiana businesses. Currently, DHH does not have the legal authority to initiate a change in the application of fees without legislative approval.

**Recommendation 15: OPH should consider developing a fee for construction plans review to cover the cost of this service.**

DHH agrees with this recommendation. The Department has not undertaken a systematic review of our fee structure recently. While we have implemented innovations in making inspection results electronically available and introducing new management tools, we are also interested in looking at

our current fee structure. Currently, DHH does not have the legal authority to initiate a change in the application of fees without legislative approval.

**Recommendation 16: OPH needs a new Sanitarian data system that captures permits, monitoring, enforcement actions, and historical information. Until this is accomplished, OPH should develop processes to ensure that complete and reliable permit and enforcement data is entered into SETS.**

DHH agrees with this recommendation. The acquisition of a new software application is cost-prohibitive at this time; however OPH is continuing to explore options and sources of revenue for updating software applications or purchasing new applications that will capture complete data and allow for easier analysis. Through the Public Health Sanitation Overhaul project, the retail food inspection data has been updated and will continue to be updated on a routine basis.

We look forward to working with your office in the future and thank you for assisting us in improving our programs and systems. If you have any questions or need any additional information, please contact us at 225/342-6188 or [jtlane@la.gov](mailto:jtlane@la.gov) or contact Beth Scalco, OPH Deputy Assistant Secretary, at 225-342-4764 or by e-mail at [beth.scalco@la.gov](mailto:beth.scalco@la.gov).

Sincerely,



Bruce D. Greenstein  
Secretary



J.T. Lane  
Assistant Secretary, Public Health



## APPENDIX B: SCOPE AND METHODOLOGY

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes (R.S.) of 1950, as amended. We conducted this audit in response to R.S. 24:522 which directs the legislative auditor to establish a schedule of performance audits to ensure that at least one performance audit is completed and published for each executive department agency within a 7-year period. In accordance with this legislative mandate, we scheduled a performance audit of the Department of Health and Hospitals (DHH)/Office of Public Health (OPH) for fiscal year 2012. Our audit focused on the Retail Food activity within DHH's OPH and covered the time period fiscal year 2009 through fiscal year 2011. In some cases, we extended our scope to the present date. The audit objective was to answer the following question:

### **Does OPH's Retail Food Program prevent and minimize foodborne illness in retail food establishments through its permitting, inspection, and enforcement processes?**

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. To answer our objectives, we reviewed internal controls relevant to the audit objectives and performed the following audit procedures:

- Reviewed the Louisiana sanitary code and Louisiana Revised Statutes to identify relevant laws and regulations.
- Interviewed DHH and OPH officials to develop an understanding of all Sanitarian Services and a detailed understanding of the retail food permitting, inspection, and enforcement processes.
- Interviewed various stakeholders representing the Louisiana Restaurant Association (LRA) including its President/CEO and executive management representatives of five LRA member restaurants in the New Orleans area.
- Assessed the reliability of data obtained from the Automated Inspection and Reporting System (AIRS) and Sanitarian Events Tracking System (SETS) databases through ACL testing, tracing to source documentation, discussions with individuals responsible for the databases, and a high level evaluation of general and application controls. Samples obtained from the data were randomly selected.

- Selected a sample of Southern states and other locations identified in national and regional organization reports as having a strong food safety program (Mississippi, Florida, South Carolina, Minnesota, Nashville, and New York City). We also requested inspection information from Georgia.
- Researched various journals for articles and other states websites related to food safety, disclosure systems and other relevant topics.
- Obtained information from the State Epidemiologist regarding foodborne illness in Louisiana.
- Researched and contacted other states to determine fees charged and fee structures for activities equivalent to those provided in Louisiana. The states researched were chosen by proximity to Louisiana, and states noted in an Association of State and Territorial Health Officials (ASTHO) report who received the largest amount of self-generated revenue from fees in fiscal year 2009. The states included in our analysis were Texas, Arkansas, Alabama, Mississippi, Florida, Colorado, Oklahoma, and Utah.
- Obtained and analyzed data from the SETS database to obtain information regarding the number of permits and fees per region for fiscal years 2009, 2010, and 2011. We limited our analysis to ecode 225 because of the volume of data and as a result of data reliability issues already identified.
- Compared permit start dates to pre-operational inspection results to identify the number of establishments receiving permits with uncorrected violations.
- Obtained and assessed the current OPH risk model for inspection frequency and compared it to the FDA recommended risk model plus models used in other states (see below for states used and our method of selection). We identified several issues with the method OPH used to populate risk category information. For example, OPH overwrote some risk category data and arbitrarily populated some risk categories. Thus, we had to limit the records we used in the finding described on pages 7-8 of this report as follows: We only included inspections for permits with a single ecode of 225; we limited our analysis to risk category 4 inspections; and we excluded inspections associated with permits that were active during our audit scope but are no longer active.
- Analyzed AIRS data from fiscal years 2009, 2010, and 2011 to summarize retail food inspection frequencies – including overdue inspections - and inspections that should have received a re-inspection but did not. We limited our analysis to ecode 225 because of the volume of data and as a result of data reliability issues already identified.
- Observed retail food inspection activities across five parishes and four OPH regions.

- Analyzed AIRS data to summarize violation data from fiscal years 2009, 2010, and 2011 and to determine the number of repeat violations, including repeat violations. We limited our analysis to ecode 225 because of the volume of data and as a result of data reliability issues already identified.
- Reviewed SETS data and requested information from OPH to determine the number of enforcement actions that took place in fiscal years 2009, 2010, and 2011.