PROGRESS REPORT: REGULATION OF FOOD SAFETY IN RETAIL FOOD ESTABLISHMENTS

OFFICE OF PUBLIC HEALTH – LOUISIANA DEPARTMENT OF HEALTH

PERFORMANCE AUDIT SERVICES
JUNE 10, 2020

FOR QUESTIONS RELATED TO THIS PERFORMANCE AUDIT, CONTACT
CHRIS MAGEE, PERFORMANCE AUDIT MANAGER,
AT 225-339-3800.

June 10, 2020

The Honorable Patrick Page Cortez,
  President of the Senate
The Honorable Clay Schexnayder,
  Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This report provides the results of our audit of the Office of Public Health's (OPH) Retail Food Program. The purpose of this audit was to evaluate OPH's progress in addressing issues identified in our November 2012 report on its inspection and enforcement processes in the Retail Food Program. OPH determines the frequency of retail food inspections using a risk-based model that considers various criteria, including the nature of the establishment, hazards associated with food preparation, and the susceptibility of the population served.

Overall, we found OPH fully implemented five of our recommendations and partially implemented three other recommendations. As a result, OPH has strengthened its inspection and enforcement processes to ensure food establishments comply with the sanitary code and other requirements.

Specifically, we found OPH conducted the required number of inspections for 7,013 (90.9%) of 7,716 risk three and four establishments in fiscal year 2019. This was an improvement from the 2012 audit, which found the office inspected 1,403 (19.3%) of 7,252 higher-risk establishments in fiscal years 2009 through 2011. However, OPH needs to further improve its process to ensure risk categories are assigned correctly. We found that 564 (1.1%) of 50,191 establishments were not assigned a risk code and that 11 establishments serving vulnerable populations were not categorized correctly as high risk.

In addition, OPH has developed criteria and timeframes for re-inspections and has improved the percentage of required re-inspections it conducts. In fiscal year 2019, OPH performed re-inspections of 5,483 (94.0%) of 5,830 establishments within required timeframes. In contrast, the 2012 audit found OPH performed re-inspections of 8,899 (67.9) of 13,099 establishments in fiscal years 2009 through 2011 within required timeframes.

We also found that OPH issued 131 compliance orders in fiscal years 2017 through 2019 for establishments that did not comply with food safety requirements, which was a significant

The Honorable Patrick Page Cortez,
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improvement from the four compliance orders issued between fiscal years 2009 and 2011. However, OPH did not issue compliance orders for 19 establishments that should have received one.
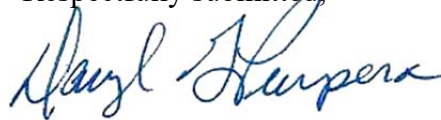
In addition, while OPH assessed penalties on 41 establishments, it did not have a process to track the amounts assessed and collected. Act 66 of the 2017 Regular Session gave OPH the authority to assess re-inspection fees for permits for establishments that show continued non-compliance with food safety regulations and to revoke permits if re-inspection fees are not paid. Since the legislation was passed, OPH has invoiced 910 owners $136,500 in re-inspection fees, and 779 (85.6%) have paid a total of $116,850.

We found as well that while OPH's data system publicly posts inspection reports to its website seven days after the inspection as intended, the office has not updated the site to include an establishment's full inspection history as recommended in the 2012 audit report. Only the three most recent inspections are posted because of bandwidth limitations. In addition, individuals searching for an establishment's reports must know how its name is listed on its permit. Otherwise, they may be unable to locate inspection results.

The report contains our findings, conclusions, and recommendations. 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 Office of Public Health for their assistance during this audit.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

OPHRETAILFOODSAFETY

Louisiana Legislative Auditor
Daryl G. Purpera, CPA, CFE

Progress Report: Regulation of Food Safety in Retail Food Establishments
Louisiana Department of Health - Office of Public Health

Introduction

We evaluated the Office of Public Health's (OPH) progress towards addressing issues identified in a November 2012 audit on the Retail Food Program[1] in regard to its inspection and enforcement processes. OPH's Retail Food Program is responsible for the regulation of food safety and enforcement of the Louisiana sanitary code.[2] In 2012, we made 16 recommendations to improve OPH's regulation processes, and it agreed with all but two of them. In this audit, we evaluated whether OPH implemented eight of the recommendations that addressed the most significant issues.

> This audit was completed prior to the COVID-19 pandemic and does not focus on OPH's efforts to ensure the safety of retail food establishments related to the spread of COVID-19.

Louisiana Revised Statute (R.S.) 40:5 *et al* gives OPH the jurisdiction, control, and authority to permit and inspect food service establishments and to enforce compliance with the state sanitary code. In order to operate in Louisiana, retail food establishments must obtain a permit. The Retail Food Program regulates multiple types of retail food establishments, including full service restaurants, nursing homes, groceries, bars, concession stands, child care facilities, and others. Within each establishment, there may be multiple permits, such as a deli or bakery that is located within a grocery store.[3] The frequency of inspections is determined by an establishment's level of risk. OPH uses four different risk categories, adopted from the 2017 Food and Drug Administration (FDA) Food Code. Exhibit 1 shows the risk categories, description and examples of establishments in the risk category, and the number of establishments for each risk type from fiscal years 2017 through 2019.

> The mission of OPH's Retail Food Program is to promote health through education that emphasizes the importance of food safety, to enforce regulations which protect the food supply and investigate foodborne illness outbreaks, and to provide leadership in food safety for the prevention of disease or injury.

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[1] http://app1.lla.state.la.us/PublicReports.nsf/0/7A1222489BEAFEF886257ABC005CCB0B/$FILE/0002DA0A.pdf

[2] The Louisiana Sanitary Code is a set of rules, regulations, and provisions promulgated by the state health officer, that covers matters within his jurisdiction in accordance with the authority granted under R.S. 36:258(B), R.S.40:4(A), and R.S. 40:5. Such rules, regulations, and provisions are housed in Title 51 of the Louisiana Administrative Code (LAC).

[3] In OPH's previous data system, permits were tracked by a permit number and ecode for each type of operation provided by the establishment, which could include a bar, deli, bakery, etc. However, in OPH's current data system, each type of operation within an establishment is assigned a separate, unique permit number. Although we analyzed the Retail Food Program on a permit instead of establishment basis for this audit, for consistency with the language used in the 2012 audit, we will refer to individual permits as establishments throughout this report.

	Exhibit 1 **Number of Establishments by Risk Type** **Fiscal Years 2017 through 2019**			
Risk Category	**Description**	**No. of Inspections Required Per Year**	**Examples**	**No. of Establishments***
1	Most convenience store operations, hot dog carts, and coffee shops	1	Family Dollar Grocery, Walmart Supercenter Bakery, Sno-Cone Haven	23,719
2	Retail food store operations, schools not serving a highly-susceptible population, and quick-service operations with a limited menu	2	Wendy's, Sonic Drive-In, Walmart Supercenter Deli	14,338
3	Full service restaurants with extensive menus and handling of raw ingredients, including complex preparations	3	Chili's, Waffle House, Copeland's Cheesecake Bistro	6,651
4	Establishments serving a highly susceptible population such as preschools, hospitals, and nursing homes. Also includes establishments conducting processing at retail.	4	Northeast LA War Veterans Home Kitchen, Rapides General Hospital, Holy Ghost Elementary	4,919
Total				**50,191**

*The number of establishments does not add to total as we found 564 establishments that were not assigned a risk category. Until October 2019, OPH's data system did not require that a risk category be assigned to all establishments.
Source: Prepared by legislative auditor's staff using information contained in OPH's DHD database and the 2017 FDA food code.

When violations are noted during inspections, OPH cites these violations as either "critical" or "non-critical." Critical violations are those that may directly contribute to food contamination or illness and include food stored at improper temperatures, poor employee hygiene, and sewage backup, among others. Examples of non-critical violations include soap and paper towels not included in the lavatory; food not stored in a clean, covered container; and outside waste receptacles not kept closed.

The objective of this review was:

To evaluate OPH's progress in addressing issues identified in our November 2012 audit report regarding its inspection and enforcement processes in the Retail Food Program.

Overall, we found that OPH fully implemented five recommendations and partially implemented three recommendations to address significant issues identified in our 2012 report. OPH's implementation is summarized on the next page and discussed in detail throughout the remainder of the report. Appendix A contains OPH's response, and Appendix B contains our scope and methodology. Appendix C contains a summary of the findings and recommendations

from our November 2012 audit report and whether OPH has implemented, partially implemented, or not implemented them. Appendix D contains the top 10 violations cited, and Appendix E contains the three establishments in each OPH region of the state with the highest number of violations from fiscal year 2017 through 2019.

Objective: To evaluate OPH's progress in addressing issues identified in our November 2012 audit report regarding its inspection and enforcement processes in the Retail Food Program.

Overall, we found that OPH fully implemented five recommendations and partially implemented three recommendations to address significant issues identified in our November 2012 audit report. As a result, OPH has strengthened its inspection and enforcement processes to ensure food establishments comply with the sanitary code and other requirements. Specifically, we found that:

- **OPH conducted the required number of inspections on 7,013 (90.9%) of 7,716 risk three and four establishments in fiscal year 2019. This is an improvement from our 2012 audit which found that OPH only inspected 1,403 (19.3%) of 7,252 required establishments in fiscal years 2009 through 2011. However, OPH needs to further improve its process to ensure that risk categories are assigned correctly.** We found that 564 (1.1%) of 50,191 establishments were not assigned a risk category and that 11 establishments that served vulnerable populations were not categorized correctly as high risk. According to OPH's risk model, high-risk establishments, which serve highly-susceptible populations such as preschools, hospitals, and nursing homes, should be inspected four times per year. Full service restaurants, which have extensive menus and handle raw ingredients, should be inspected three times per year.

- **OPH has developed criteria and timeframes for re-inspections and has improved in the percentage of required re-inspections conducted. In fiscal year 2019, OPH performed re-inspections of 5,483 (94.0%) of 5,830 establishments within required timeframes. This represents an improvement from our 2012 audit, which found that OPH performed re-inspections of 8,899 (67.9%) of 13,099 establishments within required timeframes in fiscal years 2009 through 2011.** According to OPH policy, any inspection that identifies one or more critical violations and/or five or more non-critical violations requires a re-inspection.

- **OPH issued 131 compliance orders in fiscal years 2017 through 2019 for establishments that did not comply with food safety requirements. This represents an improvement from four compliance orders issued between fiscal years 2009 through 2011. However, OPH did not issue compliance orders to 19 establishments that should have been issued a compliance order. In addition, while OPH assessed penalties to 41 establishments, it does not currently have a process to track the penalty amounts assessed and collected.** In addition to penalties, Act 66 of the 2017 Regular Legislative Session provides OPH with the authority to assess re-inspection fees for establishments that show continued noncompliance with food safety regulations, and to revoke permits if

re-inspection fees are not paid. Since the passage of Act 66, OPH has invoiced 910 owners a total of $136,500 in re-inspection fees, and 779 (85.6%) of these have paid a total of $116,850.

- **Although OPH's data system publicly posts inspection reports to its website seven days after the inspection as intended, OPH has not updated the website to include the establishment's full inspection history as recommended in our 2012 audit report.** As a result of improvements to OPH's data system, inspection reports are automatically uploaded to the Eat Safe website and are not dependent on a sanitarian to upload them. According to LDH, only the most recent three inspections are posted as a result of bandwidth limitations. In addition, unless the public searches for the permit by the name listed on the permit, they may be unable to locate inspection results. Because of this limitation, OPH should consider requiring that establishments post inspection reports on their premises so that the public can easily view inspection results.

Our findings, along with new recommendations to assist LDH in further strengthening its regulatory processes, are discussed in more detail on the following pages.

OPH conducted the required number of inspections on 7,013 (90.9%) of 7,716 risk three and four establishments in fiscal year 2019. This is an improvement from our 2012 audit which found that OPH only inspected 1,403 (19.3%) of 7,252 required establishments in fiscal years 2009 through 2011. However, OPH needs to further improve its process to ensure that risk categories are assigned correctly.

OPH determines the frequency of retail food inspections using a risk-based model that considers various criteria, including the nature of the establishment, hazards associated with food preparation, and the susceptibility of the population served. In 2012, we found that OPH only conducted 1,403 (19.3%) of 7,252 required inspections in fiscal years 2009 through 2011. In our report, we recommended that OPH update its risk model to include compliance history criteria and to ensure that it inspects high-risk establishments in accordance with its chosen risk model.

In response to our 2012 audit, OPH updated its risk model to the 2009 FDA Food Code in 2013 and again in 2017 to incorporate the 2017 FDA Food Code risk category assignments. The 2017 Food Code allows for professional judgment in the assignment of risk categories, as establishments that would otherwise be grouped in a higher-risk category can be assigned a lower risk if they have shown through historical documentation that they have achieved active control of foodborne risk factors. According to this model, high-risk establishments, which conduct specialized processes or serve highly-susceptible populations, such as preschools, hospitals, and nursing homes, should be inspected four times per year. In addition, full service restaurants, which have extensive menus and handle raw ingredients, should be inspected three times per year.

We found that 7,013 (90.9%) of 7,716 establishments in risk categories three and four were inspected in accordance with this model in fiscal year 2019. This represents an improvement from our previous audit, which found that 1,403 (19.3%) of 7,252 high-risk establishments were not inspected in accordance with this model. According to OPH staff, its goal is to ensure that at least 98% of establishments are inspected according to its risk model. While OPH did not meet this goal, it has significantly reduced the number of establishments that did not have all required routine inspections.

In response to the 2012 audit, OPH established a Quality Assurance (QA) program in calendar year 2017 to track inspections. This program initially began with one staff member, but through additional funding from re-inspection fees, OPH added two additional team members, with the last position added in January of 2019. The QA program performs regular reviews of inspection data and identifies issues, such as whether items are correctly marked on inspection reports. For example, if a violation is corrected on site, "COS" should be noted under the field violation type. Exhibit 2 shows the improvement OPH made from fiscal years 2017 through 2019 in inspecting risk three and four establishments in accordance with its risk model.

Exhibit 2 Number of Risk Three and Four Establishments Inspected in Accordance with Risk Model Fiscal Years 2017 through 2019			
Fiscal Year	**Establishments**	**Total***	**Percentage**
2017	4,501	7,698	58.5%
2018	6,228	7,698	80.9
2019	7,013	7,716	90.9
Total	**17,742**	**23,112**	**76.8%**
*2017 establishment numbers may not include all active establishments as a result of data migration issues during the transition to OPH's data system. **Source:** Prepared by legislative auditor's staff using DHD data from OPH.			

OPH needs to improve its process to ensure that it assigns risk categories correctly. We found that 564 (1.1%) of 50,191 establishments were not assigned a risk category. According to OPH, ensuring that establishments are assigned a risk category is important because OPH's data system calculates an establishment's next inspection based on the risk category. Beginning in 2019, OPH revised its DHD system to prevent sanitarians from completing a permit entry until a risk category is assigned.

We also identified 11 establishments that serve highly-susceptible populations but were not classified as high-risk, and of the nine that were active for fiscal year 2019, all had less than four inspections.[4] According to OPH staff, sanitarians can adjust risk categories based on the establishment's compliance history and the sanitarian's professional judgment. Incorrectly classifying establishments could result in OPH inspecting them less frequently, which in turn could result in food safety issues not being identified in a timely manner. Although the QA program tracks inspections and reviews them for accuracy, the QA program does not review the assignment of risk categories. Without an effective review process, OPH cannot ensure that all

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[4] There were a total of 3,522 risk category four permits in 2019.

establishments that serve highly-susceptible populations are inspected in accordance with the FDA's recommended risk model. Exhibit 3 shows the number of establishments that serve highly-susceptible populations that were incorrectly categorized in fiscal years 2017 through 2019.

Exhibit 3 Number of Establishments Serving Highly-Susceptible Populations Incorrectly Categorized Fiscal Years 2017 through 2019		
Fiscal Year	**Establishments Not Categorized Correctly***	**Total Risk Four Permits**
2017	11	3,535
2018	10	3,518
2019	9	3,522
*We found that these establishments were not inspected four times as noted in the risk model for nine (81.8%) of 11 in 2017, eight (80.0%) of 10 in 2018, and nine (100%) of nine in 2019. **Source:** Prepared by legislative auditor's staff using DHD data from OPH.		

Recommendation: OPH should ensure that its sanitarians inspect all high-risk establishments in accordance with its risk model.

Summary of Management's Response: LDH agrees with this recommendation and stated that it will continue to endeavor to reach its goal to ensure that at least 98% of establishments are inspected according to their respective rankings within the risk-assessment model and that past-due inspections are rated as a priority and conducted as soon as possible.

Recommendation: OPH should implement a supervisory review process of the risk categories of establishments to ensure that proper risk assignments are made.

Summary of Management's Response: LDH agrees with this recommendation and stated that it is currently working to add a function to its database to notify the sanitarian's supervisor when a risk assignment is reduced to ensure that the proper risk assignment is made in all cases.

OPH has developed criteria and timeframes for re-inspections and has improved in the percentage of required re-inspections conducted. In fiscal year 2019, OPH performed re-inspections of 5,483 (94.0%) of 5,830 establishments within required timeframes. This represents an improvement from our 2012 audit, which found that OPH performed re-inspections of 8,899 (67.9%) of 13,099 establishments within required timeframes in fiscal years 2009 through 2011.

In fiscal year 2019, OPH conducted re-inspections on 5,483 (94.0%) of 5,830 establishments within required timeframes. Overall, this represents an improvement from our previous audit which found that 8,899 (67.9%) of the 13,099 establishments with critical violations from fiscal year 2009 through 2011 received a re-inspection within required timeframes. Since 2013, OPH has made several revisions to its re-inspection policy and now requires that sanitarians re-inspect establishments with one uncorrected, critical violation within three business days, or establishments with five or more uncorrected, non-critical violations within 14 business days.

As mentioned previously, OPH established a QA program to track inspections and ensure quality in calendar year 2017 and became fully staffed in January 2019. The QA program performs regular reviews of inspection data and identifies issues, including whether an inspection requires a re-inspection and whether re-inspections were conducted within required timeframes. Exhibit 4 shows the number and percentage of establishments that required a re-inspection and received one within required timeframes in fiscal years 2017 through 2019, which shows an improvement within the scope of the audit.

Exhibit 4 Number of Re-Inspections Performed According to OPH Policy Fiscal Years 2017 through 2019			
Fiscal Year	**Complied with Policy**	**Total**	**Percentage**
2017	5,061	6,269	80.7%
2018	5,438	6,058	89.8
2019	5,483	5,830	94.0
Total	**15,982**	**18,157**	**88.0%**
Source: Prepared by legislative auditor's staff using DHD data from OPH.			

While OPH has a field that indicates whether a follow-up inspection is necessary, 1,080 (18.5%) of 5,830 required re-inspections did not indicate that an inspection was necessary in fiscal year 2019.[5] OPH data contains a field that is designed to indicate whether a re-inspection is necessary. According to OPH, this field was previously not used consistently because it required a date for the follow-up inspection be entered. However, at the time the

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[5] Because of limitations with this field prior to 2019, we only reviewed 2019 inspections for this analysis.

inspection was completed, sanitarians were not always able to indicate when a re-inspection would be performed.[6] To correct this, OPH has revised this data field to allow sanitarians to select options that indicate the status of the inspection. This will allow them to enter more specific information that will assist in planning future inspection or enforcement activities.

> **Recommendation:** OPH should ensure that sanitarians utilize the field in its database that indicates whether or not a re-inspection is needed to help plan re-inspection activities.

> **Summary of Management's Response:** LDH agrees with this recommendation and stated that the QA staff monitors, through electronic audit, when this field is utilized and works to ensure that dates are accurate and properly documented. In addition, as of April 1, 2020, staff will monitor, document, and report to the Sanitarian Services Administration and Regional Sanitarian Directors when follow-up inspections are not conducted on the date assigned.

OPH issued 131 compliance orders in fiscal years 2017 through 2019 for establishments that did not comply with food safety requirements. This represents an improvement from four compliance orders issued between fiscal years 2009 through 2011. However, OPH did not issue compliance orders to 19 establishments that should have been issued a compliance order. In addition, while OPH assessed penalties to 41 establishments, it does not currently have a process to track the penalty amounts assessed and collected.

Although state law and the sanitary code allowed for the use of various enforcement actions, our 2012 audit found that OPH had issued only four compliance orders between fiscal years 2009 and 2011 and only assessed penalties totaling approximately $1,300 for two of the four compliance orders. At that time, OPH staff stated that the enforcement process was too cumbersome, as the compliance order process consisted of 17 steps and required actions by multiple OPH staff. Since 2012, OPH staff stated that it has consolidated its compliance order process and created a central point of contact for compliance cases.

An effective enforcement program can serve as an important tool to reduce instances of noncompliance. Between fiscal years 2017 and 2019, OPH cited establishments with 624,582 violations, of which 146,334 (23.4%) were critical and 478,248 (76.6%) were non-critical. Appendix D shows the top 10 violations cited to retail food establishments between fiscal years 2017 and 2019, and Appendix E shows the top three establishments with violations by region.

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[6] Because some violations may require additional time to correct, such as the scheduling of an outside contractor for repairs, a re-inspection date may not have been able to be set at the time of the original inspection.

OPH issued 131 compliance orders in fiscal years 2017 through 2019 for establishments that did not comply with food safety requirements. When a permit has a re-inspection but continues to have at least one critical violation and/or five or more non-critical violations, OPH schedules a conference with a representative for the permit to try to come to a resolution regarding the unresolved violations.[7] If an agreement is reached, a second re-inspection is scheduled, and a fee of $150 is charged for this inspection. If violations are noted during this inspection, the compliance order process begins with the drafting of a compliance order document, which is forwarded to the Louisiana Department of Health (LDH) legal department. We found that OPH issued 131 compliance orders in fiscal years 2017 through 2019 for establishments that did not comply with food safety requirements.

OPH did not issue compliance orders to 19 establishments that should have been issued a compliance order. When violations are not resolved after the second re-inspection, OPH starts the compliance order process. We evaluated the inspection history for fiscal year 2019 establishments and found that there were 19 establishments that did not resolve violations within two re-inspections, but were not issued a compliance order. For example, we found one establishment that had six inspections within a 35-day period between April and May of 2019. During these inspections, the establishment was cited with ten critical violations and 20 non-critical violations. OPH staff indicated in the comments section of the establishment's third re-inspection report that a "compliance order will be initiated." However, two additional re-inspections failed to clear the violations and a compliance order was never issued. OPH was not able to provide us with a reason as to why a compliance order was not issued for this establishment.

Although OPH assessed penalties to 41 establishments as part of the compliance order process, it does not track the penalty amounts it assesses or collects. We requested information related to penalties, but OPH staff stated that they do not track this information and cannot report how much has been assessed or collected. OPH enforcement staff stated that they have not historically maintained penalty information but want to establish a means of tracking this information. Presently, OPH legal staff tracks establishments once compliance orders are issued and penalties are assessed. As cases escalate, they are reviewed by an administrative law judge. While legal staff can determine if an establishment has failed to pay assessed penalties, OPH does not have access to this information.

In addition to penalties assessed through OPH's legal department, Act 66 of the 2017 Regular Legislative Session provides OPH with the authority to assess re-inspection fees for establishments that show continued noncompliance with food safety regulations and to revoke their permit if re-inspection fees are not paid. This allows OPH to assess a $150 re-inspection fee when it conducts a second or subsequent re-inspection to verify an establishment has corrected violations. Since the passage of Act 66,[8] OPH has invoiced 910

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[7] The compliance order process is different when an establishment does not have a valid permit to operate. In this case, a re-inspection is scheduled for 15 days from the original inspection date, and if the permit is paid, there is no inspection. However, if the permit is not paid, the re-inspection is performed and a compliance conference is scheduled. If the permit is not paid within 15 business days, a second follow-up inspection is performed and the establishment is advised that the compliance order process has begun.

[8] Act 66 went into effect on March 1, 2018.

owners a total of $136,500 in re-inspection fees, and 779 (85.6%) of these have paid a total of $116,850. Act 66 also gives OPH the authority to revoke permits in instances when re-inspection fees are not paid.

> **Recommendation:** OPH should follow its established criteria for the issuance of compliance orders to establishments with a history of noncompliance.

> **Summary of Management's Response:** LDH agrees with this recommendation and stated that additional training will be provided to sanitarians regarding enforcement procedures and the compliance order process. In addition, a field has been added to the database to allow the sanitarian to document when a compliance order is initiated at an establishment.

> **Recommendation:** OPH should establish a tracking system that enables retail food staff to view and access penalty information.

> **Summary of Management's Response:** LDH agrees with this recommendation and stated that it has created a tracking database, is currently reviewing compliance order files for accurate documentation of penalty information, and is working with the Office of Debt Recovery to establish a process and documentation requirements to assist in the collection of penalties. In addition, OPH addressed the 19 instances identified in the finding through other enforcement actions, such as immediate closure of the establishment.

Although OPH's data system publicly posts inspection reports to its website seven days after the inspection as intended, OPH has not updated the website to include the establishment's full inspection history as recommended in our 2012 audit report.

In our 2012 audit, we found that OPH lacked a process to ensure that all inspection results were uploaded to the website, and that some results were never uploaded because they were not linked to a permit number. OPH implemented the Digital Health Department (DHD) software in February 2016 to automatically upload inspection results seven days after completion of the inspection.

OPH's data system publicly posts inspection reports to its website seven days after an inspection. To test whether inspections were being uploaded to the Eat Safe website[9] within the seven-day timeframe, we obtained from OPH a list of inspections performed on September 26, 2019. Seven days later, we checked OPH's Eat Safe website and located the results of all 30 inspections, which indicates that the system is performing as designed. However, one limitation that we noted in regard to the posting of the inspections is that the establishment

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[9] http://eatsafe.la.gov

must be entered in exactly as OPH lists the permit in order to directly access the establishment through the website's search feature. For example, while searching for Superior Grill on Government Street in Baton Rouge, the establishment did not show up in search results until "Superior Bar" was entered in the search text. Searches for terms such as "Superior Grill" or "Superior Bar and Grill" would not return the results for this specific location. Because of this limitation, OPH should consider requiring that establishments post inspection reports on their premises, as recommended in 2012. This would increase transparency and allow the public to easily view inspection results.

OPH has not updated the website to include the establishment's full inspection history, as recommended in 2012. According to OPH, it is still only able to post an establishment's last three inspections because bandwidth and space limitations on the Eat Safe website prohibit them from being able to post all of a permit's inspections. This limits the public's ability to review comprehensive information on the compliance history of an establishment. One alternative to using a search engine for inspections would be to post the entire inspection database online. For example, Chicago posts the raw inspection data to the city's website, including the permit name, license number, facility type, risk level, address, inspection date and type, and violations. This would allow for the public view all inspection results for an establishment.

> **Recommendation:** OPH should provide broader search term capability on the Eat Safe website to allow the public to more easily access retail food inspection results.

> **Summary of Management's Response:** LDH agrees with this recommendation and stated that it has broadened the search functionality of the website and continues to make improvements to it to make it more user friendly.

> **Recommendation:** OPH should consider requiring that establishments post inspection reports in a visible location on their premises.

> **Summary of Management's Response:** LDH agrees with this recommendation and stated that it is reviewing the advantages, disadvantages, and legal implications of requiring retail-food establishments to post their most recent inspection report in a visible location on the premises.

> **Recommendation:** OPH should consider posting raw inspection data to the OPH website so that users can view the entire compliance history of an establishment.

> **Summary of Management's Response:** LDH agrees with this recommendation and stated that it is reviewing the advantages, disadvantages, and legal implications of posting raw inspection data so that users can view the entire compliance history of an establishment.

APPENDIX A: MANAGEMENT'S RESPONSE

John Bel Edwards
GOVERNOR

State of Louisiana
Louisiana Department of Health
Office of Management and Finance

Dr. Courtney N. Phillips
SECRETARY

VIA E-MAIL ONLY

June 5, 2020

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

Re: Food Safety in Retail Food Establishments

Dear Mr. Purpera:

The Louisiana Department of Health (LDH) thanks you and your staff for your efforts in preparing the "Progress Report: Regulation of Food Safety in Retail Food Establishments" report. As we discussed during our end-of-audit review, this audit will assist us in enhancing the professional standards for our program, thereby protecting the health and well-being of residents of and visitors to the state of Louisiana. LDH appreciates the opportunity to provide this response to your office's findings.
Per your request, LDH has reviewed this report and each of your recommendations. As directed, we have indicated whether we agree or disagree with each stipulation. These responses are listed below:

Finding 1: OPH needs to further improve its process to ensure that risk categories are assigned correctly.

Recommendations:

 a) OPH should ensure that its sanitarians inspect all high-risk establishments in accordance with its risk model.

 b) OPH should implement a supervisory review process of the risk categories of establishments to ensure that proper risk assignments are made.

Response:

 a) LDH agrees with this recommendation. OPH established a Quality Assurance (QA) program in 2017 to track inspections. As demonstrated in the audit, an improvement was achieved in the number of high-risk establishments inspected from fiscal years 2017 through 2019. OPH will continue to endeavor to reach its goal to ensure that at least 98% of establishments are inspected according to their respective rankings within the risk-assessment model.

An electronic scheduler was developed and implemented to provide field sanitarians with an inventory list of establishments and their inspection due dates according to the assigned risk category. An electronic report is used by Sanitarian Services Administration and Regional Sanitarian Directors to identify past-due inspections. Past-due inspections are rated as a priority and conducted as soon as possible.

b) LDH agrees with this recommendation. Currently, sanitarians have the ability 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. A thorough analysis of the inspection history, the type of establishment and the rationale for changing the establishment's risk category is conducted to identify whether 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 the 2017 Food Code.

Sanitarian Services is currently working to add a function to OPH's database that will notify the sanitarian's supervisor when a risk assignment is reduced. This will allow for further review and discussion between the field sanitarian and his/her supervisor to ensure that the proper risk assignment is made in all cases.

Finding 2: OPH has developed criteria and timeframes for re-inspections and has improved in the percentage of required re-inspections conducted.

Recommendations:

a) OPH should ensure that sanitarians utilize the field in its database that indicates whether or not a re-inspection is needed to help plan re-inspection activities.

Response:

a) LDH agrees with this recommendation. Beginning January 2019, the Sanitarian Services QA program incorporated a review of the "Follow-Up Required" field into electronic audits to ensure proper planning of re-inspection activities.

The QA staff monitors, by electronic audit, when this field is utilized and works to ensure that dates are accurate and properly documented according to applicable Performance Directive. As of April 1, 2020, the QA staff will monitor, document, and report to the Sanitarian Services Administration and Regional Sanitarian Directors when follow-up inspections are not conducted on the date assigned.

Finding 3: OPH improved in the number of compliance orders issued, but did not issue compliance orders to 19 establishments that should have been issued a compliance order. Also, OPH does not currently have a process to track the penalty amounts assessed and collected.

Recommendations:

a) OPH should follow its established criteria for the issuance of compliance orders to establishments with a history of noncompliance.

b) OPH should establish a tracking system that enables retail food staff to view and access penalty information.

Response:

a) LDH agrees with this recommendation. Additional training will be provided to sanitarians regarding enforcement procedures and the compliance order process. In addition, a field has been added to the OPH database to allow the field sanitarian to document when a compliance order is initiated at an establishment.

b) LDH agrees with this recommendation. OPH has created a tracking database and is currently reviewing compliance order files for accurate documentation of penalty information. In addition, OPH is currently working with the Office of Debt Recovery to establish a process and documentation requirements to assist in the collection of penalties associated with compliance orders. OPH did address the 19 instances identified in the finding through other enforcement actions, such as immediate closure of the establishment.

Finding 4: OPH has not updated the website to include the establishment's full inspection history.

Recommendations:

a) OPH should provide broader search term capability on the Eat Safe website to allow the public to more easily access retail food inspection results.

b) OPH should consider requiring that establishments post inspection reports in a visible location on their premises.

c) OPH should consider posting raw inspection data to the OPH website so that users can view the entire compliance history of an establishment.

Response:

a) LDH agrees with this recommendation. OPH has broadened the search functionality of EatSafe and continues to make improvements to the website to make it more user friendly.

b) LDH agrees with this recommendation. OPH and the LDH Legal team are reviewing the advantages, disadvantages and legal implications of requiring retail-food establishments to post their most recent inspection report in a visible location on the premises..

c) LDH agrees with this recommendation. As with the previous recommendation, OPH and the LDH Legal team are reviewing the advantages, disadvantages and legal implications of posting raw inspection data so that users can view the entire compliance history of an establishment.

In addition, the EatSafe website currently displays the last three (3) inspections for the establishment. OPH has the ability to increase the number of inspections displayed for each establishment to the last ten (10) inspections, and this measure could provide users with a more comprehensive view of the establishment's compliance history.

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 Alexander C. Billioux, M.D., D. Phil., OPH Assistant Secretary, at (225) 342-6188 or by email at Alexander.Billioux@la.gov or contact Melinda Richard, OPH Deputy Assistant Secretary, at (225) 342-8483 or by e-mail at Melinda.Richard@la.gov.

Sincerely,

Cindy Rives
Undersecretary

CP/vb

APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana Department of Health's Office of Public Health's (OPH) Retail Food Program. We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit covered July 1, 2016 through June 30, 2019. Our audit objective was:

To evaluate OPH's progress in addressing issues identified in our November 2012 audit report regarding its inspection and enforcement processes in the Retail Food Program.

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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed relevant state statutes related to the Retail Food Program.

- Interviewed relevant staff from OPH to understand agency operations and processes.

- Obtained and reviewed OPH policies and procedures.

- Obtained inspection and permit information from OPH's Digital Health Department (DHD) database.

- Imported DHD data into Audit Command Language (ACL) and performed a series of analyses to determine whether OPH had demonstrated improvement in regard to its inspection, re-inspection, and enforcement processes.

- Shadowed sanitarians to observe retail food inspection process.

- Reviewed methodologies and preliminary results of our analyses with OPH and adjusted analyses based on feedback and documentation provided.

APPENDIX C: SUMMARY OF RECOMMENDATIONS AND OPH'S PROGRESS IN IMPLEMENTATION

Finding 1: OPH did not conduct 81% of inspections on high-risk establishments in accordance with its risk model.

Recommendation	Status
1. OPH should update its risk model using compliance history criteria established in the most recent FDA Food Code (2009).	**Fully Implemented.** OPH updated its risk model to the 2017 FDA Food Code, which provides for consideration of compliance history in the assessment of risk categories.
2. OPH should ensure that it inspects high-risk establishments in accordance with its risk model.	**Partially Implemented.** OPH increased the number of inspections performed of its risk category 3 and 4 establishments to 90.9% in 2019, an increase from 19.3% in the previous audit.

Finding 2: OPH did not conduct 32% of re-inspections to ensure critical violations were corrected in accordance with its policy.

Recommendation	Status
3. OPH should ensure that it conducts all required re-inspections in a timely manner to ensure that establishments have adequately addressed all violations.	**Partially Implemented.** In fiscal year 2019, OPH performed re-inspections of 5,483 (94.0%) of 5,830 establishments within required timeframes. This represents an improvement from the 2012 audit, which found that OPH performed required re-inspections of 8,899 (67.9%) of 13,099 establishments within required timeframes in fiscal years 2009 through 2011.

Finding 3: Despite the prevalence of violations, OPH rarely uses formal enforcement actions to address violations.

Recommendation	Status
4. 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.	**Partially Implemented.** OPH has established specific criteria for when a compliance order is to be issued to establishments for noncompliance. However, we found that OPH did not issue a compliance order to 19 establishments that met compliance order criteria.
5. OPH should streamline its compliance order process.	**Fully Implemented**. OPH has established specific criteria for when a compliance order is to be issued, including when establishments fail to clear re-inspections or do not have a valid permit to operate.

Finding 4: Because 33% of establishments had repeat critical violations, OPH's enforcement process does not appear to deter noncompliance.	
Recommendation	**Status**
6. OPH should develop a penalty or some other consequence for establishments with repeat critical violations.	**Fully Implemented.** Act 66 of the 2017 Regular Legislative Session established a re-inspection fee which is assessed on second and subsequent re-inspections.
7. OPH should consider charging a re-inspection fee and develop criteria for when the fee would be charged.	**Fully Implemented.** Act 66 of the 2017 Regular Legislative Session established a re-inspection fee, which is assessed on second and subsequent re-inspections.
Finding 5: Inspection results not fully disclosed to the public.	
Recommendation	**Status**
8. OPH should ensure that all inspection results are uploaded to the website in a timely manner.	**Fully Implemented.** Through the use of the DHD system, inspection results are automatically uploaded to the website after a seven-day waiting period.

APPENDIX D: TOP 10 VIOLATIONS IDENTIFIED BETWEEN FISCAL YEARS 2017 AND 2019

Violation	Description	Citations	Percentage
Walls and Ceilings	Walls and ceilings are not clean	47,051	7.5%
Non-Food Contact Surfaces Clean	Surfaces that do not have contact with food are not clean	38,663	6.2
Floors	Floors are not clean	36,305	5.8
Hand Wash Supplies – Clean, Accessible	Supplies for handwashing are not clean or easily accessible	33,524	5.7
Food Storage – 6" Off Floor, Dry, Covered	Food is not stored six inches off of the floor in a dry, covered container	33,277	5.7
Equipment Construction, Good Repair	Kitchen equipment is not well maintained or in good repair	25,685	4.1
Clean Equipment/Single Service Storage	Equipment used for single use, such as disposable containers, are not clean	23,625	3.8
Food Contact Equipment and Utensils Clean	Equipment and utensils that come into contact with food are not clean	20,082	3.2
Thermometer Provided	Thermometer is not provided for measuring temperature of hot or cold storage	20,026	3.2
Plumbing/Grease Trap	Maintenance concerns with building's plumbing or grease trap	19,638	3.1
Total		**624,582***	**100.0%**

*This represents the total of all violations from fiscal years 2017 through 2019, not just the top 10 violations.
Source: Prepared by legislative auditor's staff using data from OPH's DHD data system.

APPENDIX E: TOP THREE ESTABLISHMENTS WITH VIOLATIONS BY REGION FISCAL YEARS 2017 THROUGH 2019

Top Three Establishments by Region in Violations			
Region	**Establishment Name**	**City**	**Violations**
Region 1	Don's Seafood Hut Restaurant	Metairie	281
Region 1	Bistro New Orleans Main Kitchen	Metairie	256
Region 1	Chili's Grill & Bar 209	Metairie	248
Region 2	Oriental Pearl Restaurant	Baton Rouge	161
Region 2	Boil and Roux Restaurant	Baton Rouge	143
Region 2	Mi Padres Mexican Grill	Baton Rouge	132
Region 3	Santa Fe Cattle Company Restaurant	Thibodaux	181
Region 3	Taqueria El Jalisco Restaurant	Houma	159
Region 3	El Paso Mexican Grill	Thibodaux	143
Region 4	Charlie's Diner	Abbeville	380
Region 4	Great Wall Chinese Restaurant	Rayne	366
Region 4	New China Buffet & Grill	Abbeville	360
Region 5	Panda Super Buffet Public Eating Establishment	Lake Charles	491
Region 5	Sam's Seafood	Lake Charles	413
Region 5	Pitt Grill	Sulphur	376
Region 6	Sake Sushi Site 318594	Alexandria	210
Region 6	D&T Restaurant	Pineville	138
Region 6	Rapides General Hospital Kitchen	Alexandria	137
Region 7	El Potrillo Mexican Restaurant	Shreveport	272
Region 7	Sumo Supreme Buffet	Shreveport	162
Region 7	Nicky's Restaurant	Shreveport	153
Region 8	El Alamo Restaurant	Delhi	206
Region 8	Chopsticks Buffet	Tallulah	204
Region 8	Delhi Texaco Kitchen	Delhi	170
Region 9	Papi's Mexican Cuisine	Denham Springs	149

Region	Establishment Name	City	Violations
Region 9	Lagniappe Restaurant	Denham Springs	142
Region 9	Hot Wok Restaurant	Denham Springs	127
Source: Prepared by legislative auditor's staff using data in OPH's DHD system.			