



**REPORT OF
THE
STATE AUDITOR**

**Consumer Protection Division
Department of Public Health and Environment**

**Performance Audit
May 2003**

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This report contains the results of a performance audit of the Consumer Protection Division within the Department of Public Health and Environment. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Public Health and Environment.

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**STATE OF COLORADO
OFFICE OF THE STATE AUDITOR**

REPORT SUMMARY

**JOANNE HILL, CPA
State Auditor**

**Consumer Protection Division
Performance Audit, May 2003**

Authority, Purpose, and Scope

This performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government. The audit was conducted in accordance with generally accepted government auditing standards. Audit work was performed from August 2002 through March 2003.

The audit reviewed the Consumer Protection Division's oversight and administration of various programs and particularly focused on the operations of the Retail Food Inspection Program, which is the Division's largest program. As part of the audit, we evaluated the enforcement of retail food requirements, the processes used to ensure the quality of inspections, the tracking of consumer complaints, the frequency of inspections, and the assessment of licensing fees. We conducted four site visits to local organized health departments.

We acknowledge the assistance and cooperation of staff from the Department of Public Health and Environment as well as from local health agencies.

Consumer Protection Division

The Consumer Protection Division (the Division) of the Colorado Department of Public Health and Environment is responsible for overseeing and administering programs designed to protect the public from a variety of hazards, such as foodborne illnesses, unsafe products, and diseases transmitted from insects and rodents. The primary programs administered by the Division include:

- **Retail food, dairy, and wholesale food manufacturing and storage programs**, which ensure the safety of food products prepared, produced, sold, or served by firms in Colorado.
- **Institutional environmental health, artificial tanning device, and non-community groundwater systems programs**, which oversee and evaluate the sanitation levels and safety of child care centers, schools, correctional facilities, artificial tanning devices, and non-community groundwater systems.

For more information on this report, contact the Office of the State Auditor at (303) 869-2800.

- **Consumer product safety program**, which ensures that wholesalers and retailers are notified of recalls and that retailers remove recalled products as well as investigates injuries and deaths associated with recalled products.
- **Insect and vector control program**, which involves fieldwork, surveillance, and public notification activities related to animal- and insectborne disease, such as the hantavirus and the West Nile virus.

For some of these programs, the Division delegates functions to agencies consisting of local health departments independently enforcing state laws and regulations and other local government entities under contract with the Division.

Key Findings

- G The Division and contract agencies do not adequately ensure that violations identified during retail food inspections are corrected within the required time frames.** We found that more than 40 percent of the follow-up inspections that were scheduled in the Division's automated database were not conducted by Division or contract agency staff in Fiscal Year 2002. Further, from a review of 95 inspections conducted by the Division and contract agencies, we could find no inspection reports documenting that the Division or contract agencies had verified that violations were corrected for 35 percent of the critical items and 92 percent of the noncritical items.
- G The civil penalty process prescribed in state statutes for retail food establishments is minimally used by the Division and many local agencies.** We identified two reasons for the limited use of the civil penalties process. First, we found that the Division and many local agencies do not adequately identify circumstances in which civil penalties should be initiated. Second, we found that the civil penalty process, as it has been designed in state statutes, is often time-consuming and expensive for regulatory agencies at the state and local levels to undertake. Further, the process provides little incentive for retail food establishments to correct violations in a timely manner.
- G The systems used by the Division to track data related to foodborne illnesses are fragmented and incomplete.** We also found that the Division does not monitor how local agencies handle the foodborne illness complaints they receive. Complaint data should be combined in one automated system, oversight of local agency complaints systems should be increased, and complaint data should be analyzed on an ongoing basis.

- G The Division performs minimal activities to ensure the quality of retail food inspections throughout the State.** The Division uses a survey assessment to evaluate the overall effectiveness of retail food inspection programs in the State. However, we identified problems with the survey assessment. For instance, the survey assessment does not allow the Division to draw conclusions on the administration of any of the contract or local health department programs. Further, the survey assessment is conducted once every four to five years, and the Division does not have a mechanism in place to monitor the quality of inspections performed by inspectors throughout the State on a more frequent basis. Procedures for monitoring the quality of inspections performed by Division and local agencies' inspectors on an ongoing basis need to be developed.
- G The Division and contract agencies are not meeting inspection frequency standards for many firms and facilities in their caseloads.** For instance, we found that nearly 60 percent of the retail food inspections conducted by the Division and a sample of contract agencies in Fiscal Years 2001 and 2002 did not meet the six-month interval specified in the regulations. Division managers use a quarterly report generated from the Division's automated database to monitor the number of retail food, child care, and school inspections performed by the Division and contract agencies. However, we found that the report does not contain sufficient detail to allow Division management to thoroughly monitor compliance with inspection frequency requirements. Improvements are needed in the way the Division monitors the frequency of inspections.
- G The Division does not maintain data necessary for evaluating whether it is using its inspection resources in the most effective and efficient ways.** We were unable to conduct a detailed analysis of the Division's inspection caseloads because the Division tracks FTE by fund and not by any given activity. The Division uses the Department's time keeping system, which tracks activities that are paid for with federal and cash funds. However, this system does not track time spent on activities paid for with general funds, which is 70 percent of the Division's budget. As a result, the Division does not have a system in place to fully track the amount of time spent by each inspector on various types of inspections (e.g., retail food, milk/dairy, child care), assistance provided to and oversight of local agencies, administrative tasks, and training. A system should be developed to track the amount of time staff spend on various activities, and the data from this system should be evaluated to identify ways to improve the Division's use of its resources.

SUMMARY

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Consumer Protection Division

Department of Public Health and Environment Performance Audit - May 2003

G Finally, the Division is not recovering the full cost of conducting inspections.

About 70 percent the Division's budget is provided from the state General Fund. We believe that cash funding makes sense for the regulation of the various facilities within the Division's caseload. The State could consider either assessing flat licensing fees or assessing fees based on the costs of individual responsibilities.

A summary of our recommendations and the Department's responses can be found in the Recommendation Locator.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	19	Ensure that all violations identified during inspections are corrected within the regulatory time frames.	Department of Public Health & Environment	Agree	July 2004
2	25	Improve the effectiveness of civil penalties.	Department of Public Health & Environment	Partially Agree	June 2004
3	27	Improve public access to retail food inspection data.	Department of Public Health & Environment	Agree	September 2003
4	29	Seek an Attorney General's opinion to determine if enforcement actions against retail food establishments can continue when ownership is transferred to a relative or family member.	Department of Public Health & Environment	Agree	January 2004
5	33	Improve the management of complaints information by the Consumer Protection Division.	Department of Public Health & Environment	Agree	July 2005
6	39	Improve the retail food standardization program.	Department of Public Health & Environment	Agree	July 2004
7	44	Ensure that Consumer Protection Division staff and local agencies are conducting high-quality inspections of retail food establishments.	Department of Public Health & Environment	Agree	July 2004
8	45	Improve the effectiveness of the survey assessment.	Department of Public Health & Environment	Agree	July 2005

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
9	48	Pursue methods to automate the recording and reporting of inspection results.	Department of Public Health & Environment	Agree	July 2005
10	54	Improve monitoring of the frequency of inspections.	Department of Public Health & Environment	Partially Agree	July 2005
11	59	Consider implementing risk-based systems for the Division's inspection programs.	Department of Public Health & Environment	Agree	July 2004
12	62	Determine whether Consumer Protection Division inspection resources are used in the most efficient and effective ways.	Department of Public Health & Environment	Agree	January 2006
13	70	Evaluate alternatives for increasing cash funding for the Consumer Protection Division's operations.	Department of Public Health & Environment	Agree	Implemented and ongoing

Overview of the Consumer Protection Division

The Consumer Protection Division (the Division) of the Colorado Department of Public Health and Environment is responsible for overseeing and administering programs designed to protect the public from a variety of hazards, such as foodborne illnesses, unsafe products, and diseases transmitted by insects and rodents. The primary programs administered by the Division are listed below. For some of these programs, the Division delegates functions to agencies consisting of local health departments independently enforcing certain state laws and regulations and other local government entities under contract with the Division.

Retail Food Inspection Program

The Retail Food Inspection Program is the largest program overseen and administered by the Division. Under this program, the Division and its delegated local agencies carry out a number of activities with respect to retail food establishments, including annual licensing, periodic inspections to determine sanitary conditions, training and guidance, and enforcement actions. In Fiscal Year 2002 there were more than 18,000 retail food establishments licensed in Colorado, including restaurants, grocery stores, food carts, convenience stores, and food programs for the elderly.

In Colorado four different structures exist for administering retail food protection inspection programs, as follows:

- **Local health departments.** Fourteen organized health departments inspect about 12,400 licensed retail food establishments for 26 Colorado counties pursuant to delegation of authority from the Department. Each of these local departments is responsible for inspecting establishments, enforcing the *Colorado Retail Food Establishment Rules and Regulations*, and collecting license fees. They do not report any inspection information to the Division. The Department has established memoranda of understanding with 12 local health departments related to the direct issuance of retail food licenses by these health departments. However, the Department has not established agreements with any of the local organized health departments related to delegation of inspection activities.

- **City and County of Denver.** State statutes allow the City and County of Denver to license retail food establishments in accordance with City ordinances. Denver regulates approximately 2,000 establishments and does not report any inspection data to the Division.
- **Contract agencies.** In addition to the local organized health departments, 18 local government agencies contract with the Department to inspect about 2,700 licensed retail food establishments in 24 counties and 2 municipalities. These agencies are required to submit inspection reports and other related information to the Department.
- **Direct-service counties.** The Division provides all retail food inspection services for 13 counties located throughout the State. In Fiscal Year 2002 the Division was responsible for inspecting nearly 1,100 retail food establishments in these counties.

Institutional Environmental Health Program

The Institutional Environmental Health Program is designed to oversee and evaluate the sanitation levels and safety of the following types of facilities:

- **Child care centers.** In general, the Division inspects licensed child care centers and summer camps for children on an annual basis. However, for licensing purposes, child care regulations require them to be inspected once every two years. In Fiscal Year 2002 the Division's and contract agencies' inventory included 425 child care centers and summer camps. Because local health departments do not report information to the Division, the number of child care centers and summer camps in their inventory is unknown.
- **Schools.** All public and private K-12 schools having laboratories or engaging in industrial arts or hazardous vocational activities are targeted by the Division to be inspected a minimum of once each year; other schools are targeted for inspection a minimum of once every three years. In Fiscal Year 2002 the Division's and contract agencies' inventory included nearly 285 schools. The remaining approximately 1,700 K-12 schools in Colorado are regulated by local health departments who do not report inspection information to the Division.
- **Correctional facilities.** The Division conducts annual sanitary inspections of all public and private adult correctional facilities (including correctional industries

facilities) and youth corrections facilities in the State. In Fiscal Year 2002 the Division’s inspection inventory consisted of about 45 facilities.

The table below lists the counties served by each health agency under the retail food, child care center, and school inspection programs.

Health Agencies Providing Inspection Services Related to Retail Food Establishments, Child Care Centers, and Schools in Fiscal Year 2003				
Type of Health Agency	Counties/Cities Regulated			
Consumer Protection Division	Alamosa Conejos Costilla Elbert	Garfield Gilpin Grand	Gunnison Jackson Mineral	Moffat Rio Grande Saguache
Contract Agencies	Baca Bent Chaffee Cheyenne City of Aspen Clear Creek Dolores	Eagle Fremont Hinsdale Kiowa Kit Carson Lake Lincoln	Montezuma Montrose Ouray Park Pitkin Prowers	Routt Rio Blanco San Miguel Summit Teller Town of Vail
Local Health Departments	Adams Arapahoe Archuleta Boulder Broomfield Crowley Custer	Delta Douglas El Paso Huerfano Jefferson La Plata Larimer	Las Animas Logan Mesa Morgan Otero Phillips Pueblo	San Juan Sedgwick Washington Weld Yuma
Denver Environmental Health Department	City & County of Denver			
Source: Data provided by the Consumer Protection Division.				

Dairy Inspection Program

The Dairy Inspection Program is designed to ensure the safety of milk and dairy products produced in Colorado. This program is administered in conjunction with the National Conference on Interstate Milk Shipments (NCIMS). The NCIMS is an organization composed of representatives from the dairy industry, state and local regulatory agencies,

the Federal Food and Drug Administration, the U.S. Department of Agriculture, and consumer groups. The federal *Grade "A" Pasteurized Milk Ordinance*, which was developed by the FDA in conjunction with the NCIMS, governs the production, handling, pasteurization, and distribution of milk.

For milk producers and processors to ship milk products outside of Colorado, the State must participate in the Cooperative State-FDA Program for the Certification of Interstate Milk Shipments and adopt and implement the *Grade "A" Pasteurized Milk Ordinance*. The Division estimates that 90 percent of the State's producers and processors are involved in interstate shipment of their milk. In Fiscal Year 2002 there were 185 milk producers (generally dairy farms), about 30 dairy plants (where milk and dairy products are collected, handled, processed, and prepared for distribution), 7 single-service manufacturers (firms that produce their own milk and dairy containers), and nearly 210 milk haulers/samplers (individuals who collect official milk samples and/or transport raw milk) in Colorado. Although Division inspectors do not conduct ongoing inspections of milk haulers/samplers, they are responsible for evaluating milk haulers'/samplers' techniques once every two years. The Division performs all regulatory activities related to dairy businesses in the State. Local agencies are not involved in administering the Dairy Inspection Program.

Wholesale Food Manufacturing and Storage Program

In Colorado there are approximately 800 wholesale food manufacturing and storage facilities and seven shellfish plants. Inspections of these facilities are governed by the Colorado Food and Drug Act, the Shellfish Dealer Certification Act, the *National Shellfish Sanitation Program Model Ordinance*, and the *Colorado Wholesale Food Regulations*. The Division's activities under this program are primarily directed by an annual contract between the Department and the FDA that specifies the number of firms the Division must inspect each year. As part of the Fiscal Year 2003 contract, the Division received about \$110,000 to conduct 160 food and 6 seafood inspections. The Division is responsible for conducting all regulatory activities related to these firms. No local agencies are involved with this program.

Non-Community Groundwater Systems Program

Historically, the regulation of non-community groundwater systems was the responsibility of the Department's Water Quality Control Division. More than two years ago, the Consumer Protection Division entered into an agreement with the Water Quality Control Division to inspect these systems. A non-community groundwater system typically consists of a groundwater source (i.e., a well or a spring) that only serves one facility, such as a

school or a restaurant. The Division has established a policy to inspect the systems on an annual basis. Local agencies have the option of conducting these inspections. In Fiscal Year 2002 about 800 non-community groundwater systems existed in the State.

Artificial Tanning Device Program

The Artificial Tanning Device Program ensures the safety and sanitary conditions of artificial tanning device facilities. Under this program, artificial tanning facilities are required to register with the Division annually and pay a \$120 registration fee. Fees are deposited into the Artificial Tanning Device Education Fund and used to administer the program. The Division has set a target of inspecting one-third of the facilities in the State each year. In Fiscal Year 2002 there were more than 460 artificial tanning facilities in Colorado. The Division conducts all regulatory activities related to these facilities. Local agencies are not involved with this program.

The following table shows the consumer protection inspection programs administered by each type of health agency in Colorado.

Consumer Protection Inspection Programs Administered by Health Agencies								
Type of Health Agency ¹	Retail Food	Dairy	Wholesale Food	Child Care Centers	Schools ²	Correctional Facilities	Artificial Tanning Facilities	Non-Community Groundwater ³
Consumer Protection Division	T	T	T	T	T	T	T	T
Contract Agencies	T			T	T			T
Local Organized Health Departments	T			T	T			T

Source: Data provided by the Consumer Protection Division.

¹ In this table, Denver Environmental Health is categorized as a local organized health department. According to the Division, Denver operates in the same way as local organized health departments, with the exception of its retail food inspection program. The City and County of Denver is exempted in two sections of the Food Protection Act in state statutes (licensing process and fees related to retail food establishments), which results in Denver’s administering its retail food program differently than the Division and other local agencies.

² Not all local organized health departments conduct routine inspections of schools. According to the Division, 7 of the 15 local organized health departments (including Denver) do not conduct routine inspections of schools, but they will perform inspections if they receive a complaint.

³ According to the Division, 15 contract agencies and 13 local organized health departments (including Denver) have non-community groundwater systems in their jurisdictions, and 10 contract agencies and 10 local health departments have established Scope of Work Agreements with the Division to conduct inspections of these systems.

Consumer Product Safety Program

Under a contract with the federal Consumer Product Safety Commission (CPSC), the Division is responsible for conducting recall effectiveness checks, which include ensuring that wholesalers and retailers are notified of recalls and that retailers remove recalled product from their shelves. Additionally, as part of this contract, the Division performs in-depth investigations related to injuries and deaths associated with recalled products. In Fiscal Year 2002 the Division conducted 65 recall checks and 15 in-depth investigations.

Insect and Vector Control Program

Section 25-1-107(a)(I), C.R.S., requires the Department “to investigate and control the cause of epidemic and communicable diseases affecting public health.” According to statute, communicable diseases include illnesses that are transmitted through vectors (i.e., insects that transmit disease-producing organisms). Under the Division’s Insect and Vector Control Program, staff conduct fieldwork, surveillance, and public notification related to animal and insectborne diseases such as the hantavirus, plague, and West Nile virus. The Consumer Protection Division works closely with local agencies and the Department’s Disease Control and Environmental Epidemiology Division. The program has most recently been involved with fieldwork and surveillance activities related to the West Nile virus. These activities involve trapping and testing mosquitos for the virus as well as providing training and technical assistance to local health departments, municipalities, and mosquito abatement districts. These activities support the Department’s Disease Control and Environmental Epidemiology Division efforts to coordinate and investigate the human and veterinary cases of encephalitis, which is a brain infection caused by the West Nile virus.

Funding and FTE

For Fiscal Year 2003 the General Assembly appropriated more than \$2 million and 27.7 FTE to the Consumer Protection Division. As the table below shows, more than \$1.4 million of the appropriation, or 70 percent, was general fund monies. Cash funds are primarily generated from annual retail food establishment license fees, artificial tanning device registrations, and transfers from the Departments of Corrections and Human Services to help cover the costs of sanitary inspections of correctional facilities. Federal funds pay for inspections of wholesale food manufacturing and storage facilities and activities related to the Consumer Product Safety Program.

Consumer Protection Division Funding for Fiscal Year 2003		
Type	Dollars Appropriated	FTE Appropriated
General Fund	\$1,433,799	20.9
Cash Funds ¹	\$502,011	5.4
Federal Funds	\$123,786	1.4
Totals	\$2,059,596	27.7
<p>Source: Long Bill Appropriation for Fiscal Year 2003. ¹ Of this amount, \$68,111 is appropriated as cash funds exempt and consists of transfers from the Departments of Corrections and Human Services for correctional facilities inspections.</p>		

In Fiscal Year 2003 the Department established contracts worth about \$270,000 with local agencies to conduct inspections of retail food establishments, schools, child care centers, and summer camps. In addition, for Fiscal Year 2003 the General Assembly appropriated more than \$5.3 million (\$4.9 million of state general fund monies and about \$400,000 in federal funds) to local health departments to assist them in carrying out public health and environment programs, including various programs overseen by the Consumer Protection Division. However, the Governor vetoed this line item, stating:

The primary reason for vetoing this line is the need to reduce General Fund expenditures. In addition, this is a discretionary item and amounts to a relatively small portion of local health departments' budgets, about 5 percent. In a year when state expenditures may exceed revenues, it is imperative for the state to cut its supplementary funding for programs. In addition, local health agencies will receive more than \$7 million in new federal funds in FY 2002-03, thus mitigating some of the impact of this veto.

Due to reductions in state and local funding, Larimer County has indicated that it may return its retail food inspection program to the Division at the beginning of Fiscal Year 2004. This change would increase the Division's retail food inspection workload by nearly 1,300 firms.

Audit Scope

Our audit reviewed the Consumer Protection Division's oversight and administration of various programs and particularly focused on the operations of the Retail Food Inspection

Program, which is the Division's largest program. As part of the audit, we evaluated the frequency of inspections; the enforcement of retail food requirements; the processes used to ensure the quality of inspections; the tracking of consumer complaints; and the assessment of licensing fees. The Office of the State Auditor is currently conducting a separate performance audit of the Department of Public Health and Environment's Disease Control and Environmental Epidemiology Division, which carries out responsibilities related to the human impact of the West Nile virus and other animal and insectborne diseases.

During the audit we visited four local health departments to collect and analyze data related to their retail food inspection and institutional environmental health programs. We also contacted five contract agencies to obtain information on their inspection programs and relationships with the Division.

Enforcement of Retail Food Establishment Requirements

Chapter 1

Background

Routine inspections of retail food establishments are the primary tool used to identify noncompliance with rules and regulations. Inspections identify critical and noncritical item violations. Critical item violations are more likely than noncritical to contribute to food contamination and illness. Violations in this category include cross-contamination of foods, failure to hold foods at the proper temperature settings, evidence of rodents or insects, and failure to properly label or store poisonous or toxic items. Noncritical item violations, which can become serious if left uncorrected, include foods not properly labeled, refrigeration units lacking accurate and conspicuous thermometers, unclean food-contact surfaces, and inadequate lighting. Inspectors use a standardized checklist of 34 critical and 25 noncritical item violations that can be identified during an inspection.

To collect general information about the number of violations typically identified during inspections, we selected a sample of 312 retail food establishments regulated by the Division, contract agencies, and local health departments, and reviewed more than 1,450 inspections conducted at these establishments during Fiscal Years 2000, 2001, and 2002. We found:

- About 68 percent of the routine inspections identified one or more critical item violations, 22 percent identified only noncritical item violations, and 10 percent identified no violations.
- About one-third of the violations found in all the inspections were critical item violations and about two-thirds were noncritical.

Some violations identified during an inspection can be corrected immediately, while the inspector is still on-site at the establishment. When this occurs, the inspector notes the correction on the inspection form. For violations that are not corrected immediately, inspectors have two methods of verifying that they are subsequently corrected. One

method is to conduct an on-site follow-up visit. The other is to use a Critical Item Violation Correction Sheet (CIVCS). For any inspection where five or fewer critical item violations were found, the inspector may leave a CIVCS with the establishment's manager, who must correct the violations, indicate on the sheet what corrective steps were taken, and return it to the Division within 10 days. The CIVCS cannot be used for any establishment undergoing the civil penalty process. Division inspectors began using CIVCS for some establishments in January 2002. Currently no contract agencies use the forms.

Follow-Up on Identified Violations

Overall, we identified deficiencies in the Division's and contract agencies' efforts to follow up on identified violations to ensure they are corrected. We were unable to evaluate follow-up conducted by local health departments because the Division does not collect inspection data from them. As discussed in the Overview, the Department has not established agreements (e.g., memoranda of understanding, contracts) with local health departments related to the delegation of inspection activities. Such agreements could be used, in part, to require local health departments to report follow-up data.

First, we found that planned follow-up efforts are often not carried out. We reviewed the Division's Consumer Data Management System (CDMS) for Fiscal Year 2002 and compared all of the planned follow-up visits noted with all that were actually done. We found that over 40 percent of follow-up inspections that were scheduled in CDMS were not conducted by Division or contract agency staff, as shown below.

Completion of Follow-Up Inspections by Division and Contract Inspectors in Fiscal Year 2002			
Regulatory Agency	Number of Follow-Up Inspections Planned	Number of Follow-Up Inspections Completed	Completion Rate
Division	161	95	59%
Contract Agencies	796	458	58%
TOTALS	957	553	58%
Source: Office of the State Auditor's analysis of data in the CDMS.			

We also reviewed a sample of files for 95 inspections conducted by the Division and contract agencies to determine the extent to which they were verifying that violations had been addressed. As the following table shows, we could find no inspection report documenting that the Division or contract agency had verified that violations were corrected for 35 percent of the critical items and 92 percent of the noncritical items.

Evidence of Correction of Violations for a Sample of Retail Food Establishments¹ From July 1999 To October 2002				
Regulatory Agency	Number of Critical Violations	Percent With No Evidence of Correction²	Number of Noncritical Violations	Percent With No Evidence of Correction²
Division	80	28%	123	85%
Contractors	61	44%	149	97%
TOTALS	141	35%	272	92%
<p>Source: Office of the State Auditor's analysis of data from inspection files for retail food establishments regulated by the Consumer Protection Division and contract agencies.</p> <p>¹ The sample consisted of 20 retail food firms (10 for each regulatory agency) and 95 routine inspections (50 conducted by the Division and 45 by contract agencies).</p> <p>² These figures represent violations for which the files contained no indication that the regulatory agency had verified correction of the violation prior to the next regular inspection. Verification can occur at the time of the inspection (i.e., on-site correction) or through follow-up activities (e.g., a follow-up inspection or use of the Critical Item Violations Correction Sheets).</p>				

According to Division management, a noncritical violation is considered to be corrected if it is not identified in the subsequent routine inspection. However, the rules and regulations state that noncritical violations must be corrected by the establishment within 90 days of identification. In most cases, subsequent routine inspections occur more than 90 days after the prior inspection. As a result, we were unable to determine whether violations were corrected within the 90-day requirement.

Second, using CIVCS in place of on-site visits may not provide adequate assurance that critical violations are being corrected. The Division and contract agencies currently conduct on-site follow-ups for about 10 percent of the inspections where critical violations are identified. We estimate that because inspectors may use CIVCS for establishments with up to five critical item violations, the on-site follow-up rate could be reduced to about 3 percent. However, the lack of on-site verification increases the risk that critical violations are not being adequately addressed and that establishments are placing the public health at risk between routine inspections.

Finally, we found that the Division and contract agencies place minimal emphasis on the correction of noncritical violations, rarely following up with establishments to verify that such violations have been addressed. The Division indicated that its current practice is consistent with nationally recognized food safety regulatory standards. However, as noted above, the Division's approach does not ensure compliance with the State Board of Health's rules and regulations. If noncritical items are significant enough for the Board to require correction within 90 days and for inspectors to spend time reviewing them and noting violations, they should be considered important enough to ensure correction sooner than the next routine inspection, which can be up to one year later. The CIVCS process described above could serve as a cost-effective way to monitor correction of noncritical items rather than being used exclusively for critical item violations. However, if these items are so minor in nature that violations are not of concern, the use of inspector time to assess and report on them is wasted.

In its 2001 *Statewide Retail Food Establishment Assessment* (which was released in February 2002) the Division recommended that all agencies increase their emphasis on identifying and correcting critical item violations, stating:

Agencies should work to increase the identification, documentation and correction of critical items. Follow-up activities should be conducted if any critical item violation is identified unless the critical violation is corrected during the inspection.... The purpose of the follow-up inspection is to determine if the previous deficiencies have been corrected and to take appropriate enforcement actions for uncorrected deficiencies.

The Department is responsible, by statute, for ensuring food safety in the State's retail food establishments and should have sufficient controls in place to discharge this duty. To improve its oversight of food safety regulation, the Division should:

- Develop agreements (e.g., memoranda of understanding, contracts) with all local health departments related to the Department's delegation of retail food inspection activities to these health departments.
- Require local health departments to report inspection, violation, follow-up, and enforcement action information, at least in the aggregate, and track the data using the CDMS.
- Use the CDMS and case files to monitor violations and follow-up activities and develop performance measures for inspectors related to ensuring that violations are corrected.

- Improve the use of the CIVCS process by reducing the number of critical item violations that can be addressed and including noncritical items in the process.
- Require local agencies to use CIVCS in accordance with criteria developed by the Division.

Recommendation No. 1:

The Department of Public Health and Environment should ensure that all violations identified during inspections are corrected within the regulatory time frames by:

- a. Developing agreements (e.g., memoranda of understanding, contracts) with local health departments related to the Department's delegation of retail food inspection activities to these health departments.
- b. Requiring local health departments to report data on violations and follow-up efforts and using the CDMS to record and monitor inspection information on an ongoing basis.
- c. Developing performance expectations for Consumer Protection Division inspectors and local health agencies related to ensuring that violations are corrected. These should be included in the performance plans (for Division staff), in contracts (for contract agencies), and in memoranda of understanding (for local organized health departments).
- d. Reducing the number of critical item violations that can be addressed using CIVCS.
- e. Expanding use of CIVCS to include noncritical item violations.

Department of Public Health and Environment Response:

- a. Agree. Implementation: July 2004. The Division will draft memoranda of understanding for delegation of retail food inspection activities through collaboration and an interactive comment period with all local health agencies and will distribute the document to them for signature by July 2004. The local health agencies are not required to sign these agreements.

- b. Agree. Implementation: January 2004. Local health departments have been delegated the statutory authority to conduct inspections and take enforcement action to ensure compliance and therefore they are responsible for tracking data to record and monitor inspection information. However, the Division will request aggregate annual retail food inspection information from local agencies in January of each year, starting January 2004. Starting July 2003, the Division will improve its oversight activities of all local health agencies through our local assistance program, food program manager meetings, and numerous formal training courses.
- c. Agree. Implementation: July 2004. Performance measures for Division staff to ensure critical violations are corrected will be developed and implemented by May 2003. This is consistent with the current interpretation of the Federal Model Food Code and the Centers for Disease Control and Prevention (CDC) identification of factors that contribute to foodborne diseases. The Division will include performance measures in the memoranda of understanding developed in 1a to ensure critical violations are corrected by July 2004.
- d. Agree. Implementation: January 2004. The use of the CIVCS will be reevaluated to determine if its use should be restricted to a number fewer than five (5) critical item violations. Data from these field tests will be analyzed by January 2004.
- e. Agree. Implementation: July 2004. The purpose for initiating use of the CIVCS was to conserve resources by reducing the amount of time that staff spent conducting follow-up inspections to verify that one or two critical item violations had been corrected. Since critical violations must be corrected within 10 days, the CIVCS form will be modified to include how the establishment will address the correction of noncritical item violations by July 2004.

Penalties for Retail Food Violations

Section 25-4-1611(2) and (3), C.R.S., allows the Department and local boards to assess civil penalties against retail food establishments that have violated the Food Protection Act and the *Colorado Retail Food Establishment Rules and Regulations*. Penalties can range from the issuance of a noncompliance letter to the eventual suspension or revocation of a license. During the audit we evaluated the Division's and local agencies' use of the

civil penalty process prescribed in statute, and we identified two primary problems with the process.

Effective Use of the Current System: We found that the Division and many local agencies do not adequately identify circumstances in which civil penalties should be initiated. For example, we reviewed inspection data for 105 establishments regulated by the Division and contract agencies and found that 16 had the same critical item violation identified in two successive inspections. According to statute, further follow-up inspections should have been scheduled and noncompliance letters should have been sent to these establishments. However, these enforcement actions were not taken by the Division or contract agencies on any of the 16 establishments.

In addition, we found that the Division and local agencies do not conduct timely inspections to allow for an expeditious process. As discussed earlier in this chapter, Division and contract agency inspectors do not perform many of the on-site follow-up inspections that they indicate are necessary. For the current process to be effective, follow-up inspections must be conducted promptly. As we will discuss in greater detail later in this section, only 1 of the 18 contract agencies has assessed civil penalties against retail food establishments. For two of the three cases where civil penalties were assessed by this contract agency, the amount of time between the initial identification of the violation and the assessment of the first civil penalty exceeded a year. Extending the penalty process over a long period may dilute the impact of the sanction, convey the message that violations are unimportant, and increase the risk to public health.

Design of the Civil Penalty Structure: We found that the civil penalty process is minimally used by the Division and many local agencies. For example:

- The Division has assessed civil penalties on only two firms, totaling \$750 in fines, and has revoked no retail food licenses since 1998.
- Only one contract agency assessed any civil penalties since 1998, levying fines against three establishments totaling \$1,000. Contract agencies have revoked no licenses in the last three years.
- Of the four local health departments we visited, one does not track the number of enforcement actions it takes against retail food establishments but indicated that civil penalties are issued “infrequently” and that no licenses have been revoked in the last three years. Another assessed civil penalties totaling \$3,000 against four firms in Fiscal Year 2002 and has not suspended or revoked any licenses in the

last three years. The other two local departments were more aggressive in taking enforcement action, as described later in this chapter.

According to staff from the Division and the local health departments we contacted, the reason the civil penalty process is not often used is that it is time-consuming and expensive for the regulatory agency to undertake. They estimate that due to the requirement for multiple inspections and the involvement of legal counsel, the cost involved in pursuing a civil penalty against a firm often exceeds the amounts recovered. Furthermore, the process does not provide incentives for retail food establishments to correct violations in a timely manner. Under this system, a retail food firm remains open and continues to prepare and serve food during the lengthy penalty process illustrated in the table above. This increases the risk of illness to the public, which counters the intent of the retail food statutes and regulations.

As shown in the table below, the civil penalty process set forth in Section 25-4-1611, C.R.S., requires a minimum of four inspections (i.e., one routine and three follow-up) before a civil penalty of between \$250 and \$1,000 can be assessed for a recurring violation. Suspension or revocation of a license occurs only after three civil penalties have been assessed in a single calendar year.

<p align="center">Civil Penalty Process for Retail Food Firms Per Section 25-4-1611, C.R.S.</p>			
	Type of Inspection	Actions Taken if Violation Identified	Actions Taken if Violation Corrected
Step 1	Routine Inspection	Follow-up inspection to determine if violation has been corrected.	No further action is needed.
Step 2	1 st Follow-Up Inspection	If violation not corrected - notification of noncompliance letter (1 st letter) issued and 2 nd follow-up inspection scheduled.	No further action is needed.
Step 3	2 nd Follow-Up Inspection	If violation not corrected - 2 nd noncompliance letter issued and 3 rd follow-up inspection scheduled.	Compliance warning letter issued; no further follow-up inspections done. If same violation found during next routine inspection, regulatory agency can continue process by proceeding to Step 4.
Step 4	3 rd Follow-Up Inspection	If violation not corrected - 3 rd noncompliance letter issued, civil penalty of between \$500 and \$1,000 assessed, and 4 th follow-up inspection scheduled.	Compliance warning letter issued and civil penalty of between \$250 and \$500 may be assessed. No further follow-up inspections done. If same violation found during next routine inspection, regulatory agency can continue process by proceeding to Step 5.
Step 5	1 st Post-Civil Penalty Inspection (4 th Follow-Up Inspection)	If violation not corrected - 4 th noncompliance letter issued, 2 nd civil penalty of between \$500 and \$1,000 assessed, and 5 th follow-up inspection (known as 2 nd Post-Civil Penalty Inspection) scheduled.	Compliance warning letter issued; no further follow-up inspections done. If same violation found during next routine inspection, regulatory agency can assess civil penalty of between \$500 and \$1,000 and continue process by proceeding to Step 6.
Step 6	2 nd Post-Civil Penalty Inspection (5 th Follow-Up Inspection)	If violation not corrected - 5 th noncompliance letter issued, 3 rd civil penalty of between \$500 and \$1,000 assessed, and process to revoke the retail food license initiated.	Compliance warning letter issued; no further follow-up inspections done. If same violation found during next routine inspection, regulatory agency can assess civil penalty of between \$500 and \$1,000 and continue by proceeding to Step 7.
Step 7	Revocation	If three civil penalties assessed in a calendar year, regulatory agency shall initiate proceedings to suspend or revoke establishment's license.	

Source: Office of the State Auditor's analysis of Section 25-4-1611(2) and (3), C.R.S.

We found that even with the inherent limitations of the current penalty process, one local health department and one contract agency have successfully made enforcement a priority. These agencies have been more aggressive in pursuing civil penalties than either the Department or other local agencies we contacted. From July 1999 to September 2002, one local health department with nearly 2,900 licensed establishments assessed 53 civil penalties totaling \$27,750, suspended three licenses, and revoked six. In Calendar Years 2001 and 2002, one contract agency that is responsible for inspecting about 115 retail food establishments assessed three civil penalties worth \$1,000. These agencies demonstrate that it is possible to enforce the retail food regulations even under the current process.

Alternative Penalty Structures

We found other government agencies have penalty processes that may be more effective and less labor-intensive than Colorado's. For example, from January 2001 to October 2002, the City and County of Denver issued more than 200 penalties and assessed fines totaling more than \$68,000, with individual assessments ranging from \$25 to \$2,000. Civil penalties can be assessed against establishments where the same critical violation is identified three times or the same noncritical violation is identified four times in any 18-month period. According to Chapter 23 of the Denver Revised Municipal Code, the amount of the civil penalty varies based on the potential harm to public health and safety, the history of previous violations, the number of continuing violations, current compliance status, and the effect of the penalty on the establishment's ability to continue to do business. The food program manager has the authority to determine the amount of the penalty, which can be as much as \$2,000. In addition, retail food inspectors in Denver have the authority to write a general summons for violations, requiring establishments to pay a fine or appear in environmental court to explain their actions.

The City and County of Denver is exempted in two sections of the Food Protection Act in state statutes (e.g., licensing process and fees related to retail food establishments). According to the Department, this means that the State's civil penalty process cannot be applied to Denver's retail food establishments. However, the Act does not include provisions that specifically allow the City and County of Denver to use an alternate civil penalty process. While we found that Denver's civil penalty system is more stringent and appears to be more effective than the system established in state statutes, we believe the Department should recommend statutory changes that would clarify Denver's and other local governments' ability to use a civil penalty process different from the one specified in state statutes.

In addition, regulatory agencies in other states have civil penalty provisions that may be more effective than Colorado's. For instance, in Illinois, any person who violates or resists

any provisions of the code can be fined from \$200 to \$1,000 for each offense, and penalties may be assessed immediately and for each day the violation remains uncorrected. The Commissioner of the Texas Department of Health has the authority to impose administrative penalties, not to exceed \$10,000, against permit holders who violate food laws and rules. As with Illinois, each day the violation remains uncorrected is considered a separate offense. Penalties in Texas are based on the seriousness of the violation, enforcement costs related to the violation, history of previous violations, and the amount necessary to deter future violations.

We believe the Division should take steps to improve the use of penalties for retail food violations both by exploring alternative civil penalty structures and by monitoring the process to ensure it is used expeditiously.

Recommendation No. 2:

The Department of Public Health and Environment should improve the effectiveness of civil penalties by:

- a. Implementing methods to monitor the use of enforcement actions and the progress of all proceedings to ensure they are conducted appropriately and expeditiously by the Consumer Protection Division and contract agencies.
- b. Evaluating the design, implementation, and effectiveness of civil penalty structures used by the City and County of Denver and other states, and using the evaluation to propose statutory changes to improve the civil penalty provisions.
- c. Clarifying the authority of the City and County of Denver to use an alternate civil penalty process and recommending statutory changes if necessary.

Department of Public Health and Environment Response:

- a. Agree. Implementation: January 2004. By January 2004, the retail food program manager or designated representative will routinely review Division staff and county contract inspection reports and enforcement data based on a statistically representative sample to ensure that enforcement actions are initiated when appropriate and monitored for timely execution.
- b. Partially agree. Implementation: June 2004. The civil penalty structures used by the City and County of Denver and other states will be evaluated through a

collaborative process with stakeholders and the Division will draft potential options that may be considered for proposed statutory changes. This evaluation will be completed by June 2004.

- c. Agree. Implementation: September 2003. The Department will request an informal Attorney General's opinion to clarify the exemption of Denver from the Food Protection Act with regard to the civil penalty process. Based upon this opinion, the Division will make recommendations, as applicable, of statutory changes by September 2003.

Public Awareness

Currently the Division does not provide easy public access to retail food inspection results. Specifically, the Division's Web site does not include inspection results for retail food establishments, nor does it direct the public where such information can be obtained. If individuals want to gain access to inspection data on specific retail food establishments, they must contact the Division to request hard copies of inspection reports. If they also want to review complaint data, they must specifically ask the Division for this information. Currently complaint data are not maintained in the inspection files and the Division only provides information on complaints if individuals specifically ask for it. Division management stated that they have only received six requests for inspection data in Fiscal Years 2001 and 2002.

Publicizing inspection results provides the public with critical information on the sanitary conditions of establishments they consider patronizing and may serve as an effective compliance tool. We identified several practices used by local health departments in our sample and other states on publicizing inspections results, as described below.

Larimer County Department of Health and Environment posts all inspection reports on its Web site. To help consumers understand the inspection results, the county developed a rating system in which each violation is given a point value and the total points translate into one of five ratings ranging from inadequate to excellent. Larimer County also works with a local newspaper to publish a weekly listing of retail food firms that recently received either inadequate or excellent ratings. Publishing this information increases public awareness of inspection results and provides an incentive for establishments to maintain their facilities in good sanitary condition and to correct violations immediately. According to a December 2000 study commissioned by Larimer County, many retail food managers and owners "appreciate the public's ability to access pertinent information regarding their restaurant. Some even implied the availability of the ratings was responsible for increasing their business."

Denver Environmental Health posts inspection results on its Web site along with an explanation of the public health significance of each violation. Denver also includes information on enforcement actions taken against each firm. Additionally, Denver requires retail food establishments to post a public notice if an enforcement action, such as a civil penalty, has been assessed. If an establishment does not post the notice for a full 30 days or if the notice is obscure, an additional fine of nearly \$1,000 can be assessed.

Mesa County Health Department recognizes retail food establishments that consistently maintain superior sanitation practices. Through this program (known as the Blue Ribbon Program), establishments where no critical item violations have been identified in a calendar year receive a certificate that can be displayed on their premises. Not only does this approach reward the establishment for exemplary performance, it also provides public awareness of inspection results.

At least nine states (Alaska, Arizona, California, Massachusetts, Mississippi, New York, South Carolina, Tennessee, and Washington) post restaurant inspection results on their Web sites.

Georgia requires establishments to post their most recent inspection reports on-site and considers a firm's failure to do so a noncritical violation. Georgia health officials believe that posting inspection forms is an important consumer education and protection provision.

Overall, the Division needs to improve its mechanisms for providing inspection data to the public, such as posting results on the Division's Web site. Division management have indicated that this may be too resource-intensive for the Division to undertake at this time. However, changes in the retail food licensing fees, discussed in Chapter 3, could provide additional resources to offset these costs. At a minimum, the Division should make information on how to obtain hard copies of inspection reports readily available on its Web site.

Recommendation No. 3:

The Department of Public Health and Environment should improve public access to retail food inspection data by placing a notice on the Division's Web site that inspection results may be requested from the Division and by pursuing one or all of the following options:

- a. Posting inspection results on the Division's Web site.

- b. Working with the media in local communities across the State to publish retail food inspection results.
- c. Developing ways to positively recognize establishments that perform well on inspections and maintain a high level of compliance with food laws and regulations.
- d. Recommending changes to statutes and regulations that would require retail food establishments to post their most recent inspection results on-site for consumer review.

Department of Public Health and Environment Response:

Agree. Implementation: September 2003. Beginning July 2003, the Division will improve public access to retail food inspections by placing a notice on the Division's website that inspection results may be requested. In addition, the Division will develop ways to positively recognize establishments that maintain a high level of compliance with food laws and regulations. This recommendation will be implemented by September 2003. (option c.).

A bill was introduced during the 64th General Assembly that would require the posting of inspection findings on-site for consumer review. This bill was defeated (option d.).

Ownership Transfers

For progressive disciplinary procedures to be effective, it is important that the civil penalty process be free of loopholes that would allow establishments to avoid sanctions and continue operating under unsanitary conditions. During the audit the Division and one local health department informed us of instances in which some retail food establishments were able to halt enforcement actions by transferring ownership of the business, usually to family members, while the civil penalty or revocation process was occurring. In these cases, the restaurant was still essentially operated by the same individuals, but according to the Division, the enforcement action had to be discontinued because the name of the licensee had changed.

Due to a lack of data on changes of ownership, we could not identify the number of cases where this has occurred, but the Division and local health department informed us that this

situation has occurred only on rare occasions. Although such transfers may be uncommon, they involve establishments that have violations serious enough that the regulatory agency was pursuing suspension or revocation of their retail food licenses. To date, the Department has not sought an Attorney General's opinion on this particular issue. As part of its efforts to improve its disciplinary processes, the Department should obtain an Attorney General's opinion regarding changes of ownership and, depending on the outcome, consider proposing statutory changes to allow it to continue enforcement in such cases.

Recommendation No. 4:

The Department of Public Health and Environment should seek the opinion of the Attorney General to determine if enforcement actions against retail food establishments can continue when ownership of the establishment is transferred to a relative or family member. On the basis of the Attorney General's opinion, determine whether to propose changes to the statutes to allow enforcement actions to continue in such cases.

Department of Public Health and Environment Response:

Agree. Implementation: January 2004. The Division will request an informal Attorney General's opinion on the issue by July 2003. Based upon the Attorney General's informal opinion, the Division will evaluate and consider whether to propose changes to the legislature by January 2004.

Foodborne Illness Complaints

The Division handles complaints on foodborne illnesses that may relate to retail food establishments, wholesale food manufacturers, and milk and dairy businesses. The Department's *Foodborne Illness Task Force Systems Manual* defines a foodborne illness as:

An incident in which two or more persons experience a similar illness, usually gastrointestinal, after ingesting a common food, and epidemiologic analysis implicates food as the source of the illness. Exceptions to this definition are botulism and chemical poisoning, when one case constitutes an outbreak.

According to Department policy, the Department or local agency must investigate a complaint when (1) the case is a reportable condition or a group outbreak of a consistent illness; (2) a single case warrants investigation, such as botulism; or (3) a suspicious food history exists. The purpose of the investigation is to determine compliance with all applicable rules and regulations and correct violations to prevent further food-associated illness originating from the establishment. The establishment suspected of causing the illness may also be inspected as part of the investigation. The Department has not established time frames in which these inspections are to be conducted.

We reviewed data maintained by the Department related to foodborne illness complaints reported in Colorado in Fiscal Year 2002. Specifically, we found that data maintained in the Division's complaint database indicated that more than 550 foodborne illness complaints had been received by the Division and local agencies during this year. However, it is unknown from this database how many complaints involved confirmed cases of foodborne illness. The Department's Division of Disease Control and Environmental Epidemiology maintains a separate database that shows the number of confirmed foodborne illness outbreaks for the year, which indicates that 19 foodborne illness outbreaks affecting at least 438 people in Colorado were reported in Fiscal Year 2002. However, the Department estimates that the actual number of illnesses may be considerably higher because not all outbreaks are reported.

While data maintained by the Department on the number of foodborne illness complaints provides some indication of the effectiveness of retail food inspection programs in the State, we question the adequacy of the data maintained by the Division. We found that the processes used by the Division to track complaint data are fragmented and incomplete. Specifically, the Division maintains a variety of complaint data in the following four locations:

- **A complaint database** that contains food-related complaint data voluntarily reported by the Division, contract agencies, and local health departments. Agencies do not report the details of each complaint, only the number received, the types of establishments involved, and the number of hepatitis A foodborne investigations conducted.
- **A notebook** containing forms that are completed whenever an individual files a complaint with the Division. The forms include basic information such as the complainant's name, the nature of the complaint, the suspect establishment and food, and the symptoms of illness experienced if applicable. The notebook is the only location where detailed data on complaints are maintained.

- **The Consumer Data Management System (CDMS)**, which documents all inspections that are conducted on the basis of a complaint and includes the inspection date and any violations identified. This system does not include specific data such as the nature of the complaint.
- **Establishment inspection files**, which contain only the reports prepared when a complaints-based inspection of a firm is conducted. In general, the files do not include specific data such as the nature of the complaint.

Using data from these different locations, we attempted to evaluate how the Division handles foodborne illness complaints. However, we were unable to reliably conclude on the adequacy of the complaints system because data maintained in these locations were incomplete. Even with these four systems, we were unable to determine basic information about complaints, such as:

- The total number filed during any given period.
- The number of complaints filed by type of illness, type of establishment, or geographic location.
- Whether the complaint led to an on-site investigation.
- The final disposition of the complaint.

For example, the complaint database listed 28 complaints filed against establishments within the Division's caseload in Fiscal Year 2002. For the same time period, the notebook contained seven retail food complaints. We could not positively match these complaints with the complaints in the database due to the lack of detailed information in the database. Furthermore, CDMS showed that the Division conducted four complaint inspections in Fiscal Year 2002. However, only one of these could be traced back to the notebook; the other three appeared to be based on complaints that were not documented in the notebook. The fragmentation of the complaints tracking systems limits the ability of the Division to ensure that all complaints are handled appropriately. Furthermore, the Division cannot use complaints information to evaluate the effectiveness of its retail food regulatory programs.

Local Agency Complaint Handling

Local health departments with retail food programs provide monthly reports to the Consumer Protection Division regarding the number of complaints received, the types of establishments involved, and the number of hepatitis A foodborne investigations they

conducted. However, this reporting is voluntary and the Division does not know if the data received are complete. We reviewed these reports for Fiscal Year 2002 and found there were no reports of foodborne illnesses from eight agencies (24 percent). Additionally, since local agencies are required to report only summary information, the Division has no detailed information on most of the foodborne illness complaints filed in the State. This limits the Division's ability to be proactive.

We also found that the Division does not monitor how local agencies handle the foodborne illness complaints they receive. This means that the Division does not know whether local agencies are properly conducting investigations and inspections of retail food establishments suspected of causing foodborne illnesses. By not taking appropriate actions to address foodborne illness complaints, local agencies may not be meeting the statutory goals of the retail food inspection programs, which include (1) ensuring the safety of food prepared, sold, or served by establishments; (2) maximizing public health; (3) identifying and taking measures to prevent, reduce, or eliminate hazards and potential sources of contamination; and (4) reducing and controlling the spread of foodborne illness outbreaks. As the agency responsible for statewide food safety, the Division should exercise some oversight to ensure that agencies throughout the State are appropriately responding to complaints. This could be accomplished primarily through more complete reporting of complaints information, such as the actions taken to address complaints.

Analysis of Complaint Data

It is important for the Division to have information on foodborne illness incidents to track any trends or indicators the data may reveal and to evaluate inspections. The Division can generate reports on the total number of complaints contained in the database by regulatory agency, by type of establishment involved, and by number of individuals affected. The Division should review and analyze such reports to identify any problem areas in its retail food program to determine the average number and most common types of complaints in each regulatory agency's or inspector's workload. Significant variations from the averages or increases over time might indicate that regulatory activities are insufficient to ensure adequate sanitary standards in some areas.

To improve its foodborne illness complaints system, the Division should:

- **Combine all complaint data into one automated system** and record specific information, including the name of the complainant, the nature of the complaint, the symptoms of illness reported, whether a foodborne illness was diagnosed, the establishment and food suspected, the actions taken by the regulatory agency, and the final disposition of the complaint.

- **Increase oversight of local agency complaints systems** by requiring detailed reporting of complaints and outcomes in its contracts and memoranda of understanding with local agencies. These reports should be included in the automated complaints system. In addition, the Division should regularly review the information reported and work with any local agencies that may need assistance in handling complaints.
- **Include complaints data in the establishment inspection files** to help inspectors easily identify trends in the number and types of complaints related to the establishments they regulate. Further, such data could be useful to members of the general public reviewing inspection records. According to the Division, individuals must specifically request complaints data, since they are not maintained in the inspection files. Including such information in the files would be useful to individuals in their assessments of a particular establishment.
- **Analyze complaint data on an ongoing basis** to identify and address any problem areas in the retail food program and for use in its inspection program.

Recommendation No. 5:

The Department of Public Health and Environment should improve the management of complaints information by the Consumer Protection Division by:

- a. Replacing the current fragmented complaint tracking system with a single automated database containing details of all foodborne illness complaints.
- b. Increasing oversight of local agencies' complaints systems by establishing reporting requirements in all contracts and memoranda of understanding.
- c. Including specific information related to complaints in establishment inspection files.
- d. Evaluating foodborne illness complaint data on a regular basis to identify any trends or problem areas that should be addressed and for use in a risk-based inspection system.

Department of Public Health and Environment Response:

- a. Agree. Implementation: July 2005. Full implementation of this recommendation is dependent upon the availability of other additional resources. The Division recognizes the need for a more complete complaint tracking system utilizing a single automated database. The Division will develop and implement the requirements document by July 2004 and will hire a contractor to develop, design, and implement the program/database by July 2005.
 - b. Agree. Implementation: July 2004. The Division will implement reporting requirements in the memoranda of understanding outlined in 1a by July 2004.
 - c. Agree. Implementation: July 2003.
 - d. Agree. Implementation: September 2003. Full implementation of this recommendation is dependent upon the availability of other additional resources for items 5a and 5b. In the interim, a modified tracking system will be implemented September 2003. The Division will continue to evaluate foodborne illness complaint data on a regular basis and will be able to more accurately evaluate trends through the implementation of items 5a and 5b above.
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Food Service and Sanitary Inspections

Chapter 2

Background

The Consumer Protection Division and local agencies inspect a variety of facilities to ensure compliance with sanitary standards. All types of facilities regulated by the Division are inspected under a system of routine frequencies, as the following table shows.

Inspection Frequency Requirements		
Firm/Facility Type	Requirement	Who Inspects
Retail Food - General	Once/6 months	Division & local agencies
Retail Food - School Food Service	Once/school year	Division & local agencies
Retail Food - Convenience Stores and Grocery Stores Without a Deli	Once/year	Division & local agencies
Retail Food - Seasonal Food Service	Once/season of operation	Division & local agencies
Retail Food - Temporary Food Service	When found in operation	Division & local agencies
Milk Producers	Once/6 months	Division
Grade A Milk Plants & Single Service Manufacturers ¹	Once/3 months	Division
Non-Grade A Milk Plants	Once/6 months	Division
Wholesale Food	Determined by FDA Contract ²	Division
Shellfish Plants	Once/6 months	Division
Artificial Tanning	One-third of the firms/year	Division
Schools	Once/year if school has lab or workshop; once/3 years if not	Division & local agencies
Child Care Centers	Once/year	Division & local agencies
Correctional Institutions	Once/year	Division
Non-Community Groundwater	Once/year	Division & local agencies

Source: State and federal rules and regulations, state statutes, and Division policies.

¹ Single Service Manufacturers are firms that produce their own containers for milk and dairy products.

² The frequency of wholesale food inspections is established through a contract with the FDA.

As discussed in the Overview, the Division and local agencies are responsible for conducting regulatory activities related to more than 18,000 retail food establishments in the State, and these responsibilities are divided among 34 different agencies. According to Section 25-4-1601, C.R.S., inspections of retail food establishments are intended to:

- Ensure the safety of food prepared, sold, or served in retail food establishments.
- Maximize public health protection.
- Identify hazards and potential sources of contamination and take measures to prevent, reduce, or eliminate the physical, chemical or biological agents in food prepared, sold, or served in retail food establishments.
- Improve the sanitary condition of all retail food establishments, reduce foodborne illness outbreaks, and control the spread of foodborne disease from retail food establishments.

To meet the statutory goals for safe retail food establishments, it is important for the Division and local agencies to ensure that inspections performed by their inspectors are of high quality. The Division has two primary mechanisms to measure and ensure the quality and uniformity of retail food inspections. First, the Division evaluates retail food inspectors throughout the State to achieve statewide uniformity in the interpretation and application of the *Colorado Retail Food Establishment Rules and Regulations*. The process involves a standardization officer observing and evaluating how a candidate performs retail food inspections. Second, the Division conducts a survey assessment every four to five years as a way of measuring the overall effectiveness of retail food inspection programs throughout the State. The most recent assessments were completed in 1997 and 2001. This chapter describes the improvements we identified for each of these processes.

Inspector Certification

The Division issues certificates to inspectors throughout the State who meet standardization criteria. Under its standardization program, individual inspectors are evaluated to ensure they conduct inspections in a manner consistent with retail food statutes and regulations. For an inspector to receive a certificate of standardization, he or she must conduct eight field inspections that are evaluated by a standardization officer from the Division. To pass the standardization exercises, the candidate must meet the minimum requirements for each performance area. For instance, the candidate must have identified at least 90 percent of the critical item violations noted by the standardization officer, and at least 85 percent of

the noncritical item violations. For reissuance of a certificate of standardization, which is required every three years, six inspections are conducted and evaluated. This process can be an effective mechanism for promoting and maintaining the uniform interpretation and application of rules and regulations statewide.

As part of the audit, we reviewed the processes used by the Division to evaluate and issue certificates of standardization to inspectors and to oversee how local agencies evaluate their own staff. We identified the following concerns related to these processes.

Participation in the Standardization Program: As of February 28, 2003, the Division, contract agencies, and local health departments employed 28 inspectors who had been issued certificates of standardization under the Division or U.S. Food & Drug Administration's (FDA) standardization program, as follows:

- Eight local health departments each had one inspector who had been issued certificates of standardization under the Division's program.
- Three local health departments each had two inspectors who had successfully completed the Division's standardization program.
- Four contract agencies each had one inspector who had been issued certificates of standardization under the Division's program.
- The Division had four staff who had been issued certificates of standardization under the FDA's program and six who had been issued certificates of standardization under the Division's program.

According to Division policy, any agency that directly issues retail food licenses must employ at least one staff that has been issued a certificate of standardization under the Division's program. Therefore, the 12 local health departments and 2 contract agencies that issue retail food licenses must employ at least one staff member who has been issued a certificate of standardization under the Division's program. Once an inspector from a local agency has been issued a certificate of standardization by the Division, that inspector is responsible for conducting standardization exercises for other staff in the local program. Despite this policy, as of February 28, 2003, two local health departments and two contract agencies did not employ any inspectors who had been issued certificates of standardization under the Division's program. Additionally, Denver, which issues retail food licenses under its own authority, has two inspectors that have been standardized by the Division.

For the local agencies that do not directly issue retail food licenses (2 local health departments and 16 contract agencies), the Division has issued certificates of standardization to inspectors from 4 contract agencies, which means 2 local health

departments and 12 contract agencies do not have any standardized inspectors. For these agencies, participation in the standardization program is voluntary. Additionally, the Division has not issued certificates of standardization to five of its own field inspectors because these inspectors did not meet the minimum requirements for standardization.

To achieve the goals of the standardization program, the Division should establish a policy requiring all eligible inspectors to be evaluated under the program and include the requirement in its contracts and memoranda of understanding. Two of the local health departments we visited have this requirement for their own inspectors. Further, the FDA suggests in its *Recommended National Retail Food Regulatory Program Standards* that “within 18 months of employment or assignment to a retail food program, staff conducting inspections [should] ... satisfactorily complete eight joint inspections” as part of a standardization process. Currently the Division requires inspectors to have at least two years of full-time experience in Colorado in retail food establishment inspections or at least 100 retail food establishment inspections performed within the past three years to be eligible to participate in its standardization program. The Division should consider reducing the amount of job experience required to participate in the program.

The Division estimates that it takes 45 hours of staff time to evaluate an inspector under the standardization program for the first time and about 35 hours to renew an inspector’s certificate of standardization. Using the average salary and benefits paid to the Division’s four standardization officers in Fiscal Year 2002, we estimate that it costs about \$1,575 to initially evaluate and issue a certificate to an inspector under the program and \$1,225 to renew the certificate of standardization. This means that it would cost approximately \$36,000 to issue certificates of standardization to one inspector from each of the 18 local agencies that currently have no standardized staff and to the five Division inspectors that currently have not been issued certificates. It should be noted that this estimate does not include costs associated with travel and per diem.

Oversight of Local Standardization Programs: Beyond its own staff and the local inspectors who have been issued certificates of standardization under the Division or the FDA’s program, the Division does not know which of the other retail food inspectors in Colorado have been standardized at the local level. Further, the Division does not know what types of requirements and procedures are used by local agencies to standardize their inspectors. This is because once the Division has issued certificates of standardization to one inspector in a local agency, it has limited involvement in the local standardization program (e.g., providing technical assistance to local agencies on request).

The standardization program’s primary goal is to promote uniform interpretation and application of the *Colorado Retail Food Establishment Rules and Regulations*.

However, without some oversight of local efforts, the intent of the standardization program may not be achieved. For example, we found there are differences in both the processes and requirements for standardization between the Division's program and those of some local health departments we visited. Specifically, two health departments use their standardization programs as a mechanism for training new staff and do not require their staff to have past experience in retail food inspections. Another health department has modified the format of standardization exercises to be more consistent with the inspection form used by the agency for routine inspection, which is somewhat different from the one used by the Division.

We believe the Division should monitor local agencies' standardization programs to ensure that quality standards are maintained at the local level. Although there should be flexibility for local agencies to develop standardization programs that best meet their needs, by reviewing these programs the Division could provide more assistance to local agencies on designing their standardization programs. One health department we visited expressed concerns that the Division had not provided adequate guidance to them in developing their program.

Recommendation No. 6:

The Department of Public Health and Environment should improve its retail food standardization program by:

- a. Establishing a policy requiring that all retail food inspectors meeting eligibility criteria participate in the standardization program and including the requirement in contracts and memoranda of understanding with local agencies.
- b. Developing and implementing policies and procedures for monitoring how local agencies evaluate retail food inspectors under their standardization programs and tracking which local staff have been issued certificates of standardization at the local level.
- c. Evaluating whether the job experience requirement for participating in the standardization program should be modified.

Department of Public Health and Environment Response:

- a. Agree. Implementation: July 2004. The Division's policy has been changed to indicate that at least one eligible retail food inspector at each local health agency is required to be standardized by the Division. This policy will be distributed by July 2003. Contracts will be modified to require at least one eligible individual to apply for standardization by July 2003. Current memoranda of understanding presently require this per Division policy for licensing requirements and this will also be included in the memoranda of understanding outlined in 1a by July 2004.
- b. Agree. Implementation: January 2004.
- c. Agree. Implemented. The job experience requirement has been evaluated and modified to incorporate the eighteen-month time frame.

Quality Assurance

As discussed earlier, the Division evaluates the overall effectiveness of retail food inspection programs in the State using its survey assessment. The Division's 2001 survey assessment concluded that inspection activities in the State were "inadequate to address the food-handling practices most commonly associated with foodborne disease outbreaks." The report specifically identified the need to verify the quality of retail food inspections. As part of the audit, we evaluated the processes used by the Division and local agencies to ensure that retail food inspections conducted by their staff are of high quality. We identified concerns with how the Division ensures the quality of retail food inspections, as described below.

Oversight of Inspections

The survey assessment is the primary tool used by the Division to assess the overall quality of retail food inspections. As mentioned earlier, the survey assessment is conducted every four to five years by the Division. The assessment involves Division staff's conducting inspections at a sample of retail food establishments throughout the State and comparing the results with previous routine inspections performed by Division and local agency inspectors. For the 2001 survey assessment, the sample included 70 retail food firms from the Division's inventory of establishments that it inspects (about 7 percent), 77 firms from

contract agencies' inventories (about 3 percent), and 77 firms from local health departments' inventories (about 0.5 percent). These samples allow the Division to make a broad assessment of inspection quality, but are too small to draw conclusions on the administration of any of the contract or local health department programs. As a result, the survey assessment does not provide specific feedback to any one local agency.

We found that the Division does not have mechanisms in place to monitor the quality of inspections performed by inspectors throughout the State on a more periodic basis. Specifically, we found that program managers within the Division perform limited quality assurance reviews of work conducted by their own staff. Managers do not review the accuracy and quality of inspection reports submitted by their staff (except for reports prepared by recently hired staff). Further, although managers conduct joint inspections as part of training of new staff and standardization exercises, they do not perform joint inspections with their staff to evaluate the quality and uniformity of inspections on a periodic basis. The Division has not established policies and procedures describing how managers should monitor the quality of retail food inspections on an ongoing basis.

Division staff conduct periodic reviews of the contract agencies' inspection reports and provide feedback to the agencies, as necessary. According to Division management, these reviews primarily consist of ensuring that the inspection reports are accurate and complete. However, these reviews do not evaluate the quality or uniformity of the inspections conducted by contract agencies. The quality of inspections performed by local health departments is only reviewed by the Division as part of the survey assessment.

We found that some local health departments we visited perform ongoing monitoring of the quality of inspections conducted by their inspectors. For instance, managers from one local health department conduct on-site visits and consultations with establishments following inspections by their staff to ensure that these inspections were of high quality and performed in a professional manner. Another local health department conducts quarterly audits of inspections performed by its staff to ensure the quality of these inspections.

The FDA's *Recommended National Retail Food Regulatory Program Standards* provide guidance on how states should develop quality assurance programs. These standards state that program managers should implement an ongoing quality assurance program that evaluates the uniformity, quality, and frequency of inspections performed by their staff.

An alternative to the current approach would be for the Division to conduct a more focused assessment of a few retail food inspection programs each year. Rather than attempting to assess all programs every four to five years, the Division could choose a few

agencies annually and review a larger sample of those agencies' inspections. This approach would allow the Division to provide specific feedback to each agency and could include both strengths and weaknesses of the program. The Division could also share the results of these evaluations, in the aggregate, with all programs in the State to improve the quality of inspection programs statewide.

In addition, Division managers should review inspection reports prepared by their staff on an ongoing basis to ensure the accuracy and completeness of these reports. Further, managers should periodically conduct joint inspections with their staff to evaluate their performance during inspections. This should be in addition to joint inspection conducted as part of the standardization program. Following these inspections, managers should provide feedback to staff on strengths and weaknesses observed, and if the manager identifies deficiencies in the quality or consistency of inspections conducted by these staff members, the manager should develop and implement a plan to address these problems. This may include providing additional training or taking appropriate corrective or disciplinary actions, if necessary.

Use of Available Data to Improve Quality

As discussed earlier, the Division maintains an automated database (CDMS) that it uses to maintain inspection and enforcement data for firms regulated by the Division and contract agencies. The Division minimally uses the information in this system as a tool to evaluate the quality of inspections performed by its own inspectors and those from contract agencies.

Using data from this system, we identified a number of problems with inspection and enforcement activities. For instance, as discussed in Chapter 1, Division and contract inspectors did not perform more than 40 percent of the follow-up inspections that they indicated needed to be performed in Fiscal Year 2002. Further, we identified several instances where civil penalty actions could have been initiated against retail food establishments but were not started by inspectors. We also found that data included within the hard copies of inspection reports provide useful information for determining whether violations were corrected within the required time frames. As discussed in Chapter 1, we found no evidence of correction of 35 percent of the critical violations and 92 percent of the noncritical violations identified in a sample of inspections conducted by the Division and contract agencies.

We found that two local health departments we visited use their automated databases on a regular basis to evaluate trends related to inspections performed by their staff, such as the types of violations most often identified by inspectors and the frequency of inspections.

Analyzing data contained in inspection reports would allow managers to determine if particular inspectors tend to identify or focus on particular violations in all establishments and/or de-emphasize certain violations, adequately ensure that violations are corrected within the required time frames, and initiate enforcement actions when violations are not corrected. This information could help managers evaluate staff performance and identify training needs for the Division and contract agencies.

Design and Use of the Survey Assessment

While the survey assessment provides some indication of the effectiveness of retail food inspection programs in the State, we identified the following concerns with the design and use of this tool.

Comparability of Inspection Results: To evaluate the quality and uniformity of inspections, Division staff conducted inspections at a sample of 224 retail food establishments throughout the State as part of its most recent survey assessment and compared the types of violations identified in these inspections with those noted in past inspections performed by other Division and local agency staff. According to the Division, differences in the violations identified in the two inspections indicate possible weaknesses in the quality of the inspection program. However, because of the amount of time that can elapse between the survey assessment inspection and the prior inspection (in some cases, as long as a year), the comparison of inspection results may not reveal deficiencies in inspection quality. Instead, differences in the violations identified in the original inspection and the survey assessment inspection may be due to changes in the sanitary condition of the establishment. Rather than relying solely on comparisons of two inspections that may have occurred up to 12 months apart, the Division should consider conducting simultaneous inspections with local agencies to determine if inspectors are properly identifying violations during inspections. This would provide for a more accurate assessment of inspection quality.

Implementation of Survey Assessment Recommendations: In addition to improving the assessment tool, the Division needs to implement the recommendations resulting from the survey. For instance, as discussed earlier, the assessment recommended that program managers develop methods to audit inspection work to verify the quality of inspections and enforcement actions. To date, the Division has not implemented this recommendation for its own inspectors and has not provided any guidance to local agencies on how they can improve their own inspection oversight. The survey assessment also recommended that agencies increase the identification, documentation, and correction of critical item violations. The Division collected additional data to determine the extent of the problem between March and June 2002. However, the Division has not monitored whether

inspectors are appropriately identifying critical item violations and are adequately ensuring and documenting correction of violations.

A significant amount of time and staff resources are used to conduct survey assessments. According to Division management, two staff spent a considerable portion of their time over a two-year period to complete the most recent assessment, including inspecting over 220 firms throughout the State. We were unable to calculate the precise cost for conducting the survey assessment because the Department did not maintain specific data on the amount of staff time spent, travel costs, or administrative expenses associated with the project. However, based on salary data and approximate time spent, we roughly estimate that the cost of the staff time alone to conduct the survey assessment was about \$140,000.

To ensure assessments of retail food inspection programs are worthwhile, the Division should modify the scope and approaches used in the survey assessment and develop plans for addressing recommendations, including those identified in the 2001 survey assessment report. The Division should also provide guidance and assistance to local agencies on implementing recommendations pertaining to their operations.

Recommendation No. 7:

The Department of Public Health and Environment should ensure that Consumer Protection staff and local agencies are conducting high-quality inspections of retail food establishments by:

- a. Monitoring the quality of inspection reports submitted by Division staff on an ongoing basis.
- b. Conducting periodic joint inspections with Division staff to assess the quality of inspections performed by these staff members.
- c. Analyzing trends related to the types of violations identified by Division and contract agencies' inspectors and other indicators related to the quality of inspections on at least a quarterly basis.
- d. Monitoring how local organized health departments are ensuring that retail food inspections conducted by their inspectors are of high quality on a regular basis.

Department of Public Health and Environment Response:

- a. Agree. Implementation: January 2004. By January 2004, the retail food program manager or designated representative will routinely review Division staff inspection reports based on a statistically representative sample to ensure the quality of the reports.
- b. Agree. Implementation: July 2003. The Division has and is currently conducting periodic joint inspections with Division staff as part of training, pre-standardization, initial standardization and standardization renewals. The Division will conduct additional joint inspections as other additional resources allow by July 2003.
- c. Agree. Implementation: July 2004. Computer resources are being secured and the recommendation can be implemented by July 2004.
- d. Agree. Implementation: January 2004. Through our Local Assistance Program (“LAP”) the recommendation can be incorporated by January 2004.

Recommendation No. 8:

The Department of Public Health and Environment should improve the effectiveness of the survey assessment by:

- a. Evaluating a small sample of retail food programs each year rather than reviewing all programs every four to five years.
- b. Conducting concurrent inspections with agency inspectors to evaluate inspection quality instead of relying solely on comparison of inspections that may have occurred many months apart.
- c. Developing and implementing plans for addressing recommendations identified in each survey assessment, including the most recent survey.
- d. Providing guidance and assistance to local agencies in implementing recommendations from all survey assessments.

Department of Public Health and Environment Response:

- a. Agree. Implementation: July 2004. The Division will develop and implement a process for more frequent evaluation of local agencies by July 2004.
- b. Agree. Implementation: July 2005. Full implementation will be concurrent with 8a.
- c. Agree. Implementation: July 2004. The plans have been developed and the majority of the recommendations have been implemented for the most recent survey. The remaining recommendations will be implemented by July 2004. Additionally, the Division will develop and implement plans for addressing survey recommendations with each subsequent survey.
- d. Agree. Implemented and ongoing. Guidance and assistance to local health agencies is ongoing and will continue to be provided in the future.

Accuracy of Inspection Data

As part of the audit, we reviewed the data maintained by the Division's Consumer Data Management System (CDMS). The Division primarily uses CDMS to store data related to inspections performed by the Division and contract agencies and to monitor progress made by inspectors to complete their required inspections for each year. As we have noted throughout this report, we believe that this tool could be more effective if the Division expanded its use of this system to analyze trends related to inspections and enforcement actions, improve how it manages its own staff, and monitor the activities of contract agencies. In addition to expanding its use of the system, we found that the Division needs to better ensure the accuracy of data recorded in CDMS. We compared a sample of hard-copy inspection reports with CDMS data and identified discrepancies for 32 of the 151 inspections reviewed (21 percent).

We identified two reasons why data recorded in CDMS are not accurate. First, the Division does not have a system in place for periodically reviewing data entered in CDMS to ensure its accuracy. Second, Division inspectors do not directly enter inspection data into CDMS. Instead, inspectors take handwritten notes and manually complete reports for each inspection conducted. According to the Division, one full-time administrative assistant spends about 80 percent of her time entering data from all reports prepared by

Division and contract agency inspectors into CDMS. Data entered include the firm name and location, inspector name and number, date and time of inspection, all violations noted, and whether a follow-up inspection is needed.

Having inspection data manually entered into CDMS by staff other than inspectors has several drawbacks. First, the Division spends about \$37,000 annually on the personal services costs of the administrative assistant who enters the data. Second, as discussed earlier, there is an increased risk of inaccurate data being entered into the system due to unclear reports or entry errors. Finally, it is time-consuming and costly for contract agencies to submit hard copies of all their inspection reports to the Division each month.

An alternative to the current process would be for the Division to automate its inspection reports. Our 1997 audit of the Consumer Protection Division recommended that the Division provide field inspectors with handheld computers so that they could document inspection results on-site. To date, the Division has not instituted the use of electronic devices for recording inspection results. However, in April 2002 the Division hired a consultant to evaluate the feasibility of inspectors' using electronic devices to record and report inspection results. The consultant assessed the costs and benefits of inspectors' using various types of electronic devices, such as personal digital assistants (PDAs) and portable PCs, for compiling their inspection results. The consultant concluded that laptop PCs would provide the most advantages, including the capability of running the CDMS application on the machine. The evaluation did not include an estimation of the total cost to the Division of all inspectors' being equipped with laptops, or the savings and efficiencies that would be achieved through automation.

We obtained some rough cost estimates for the hardware recommended by the consultant (laptops and portable printers) and found these costs ranged from about \$1,030 to \$2,490 per inspector. Therefore, the hardware costs to the Division of equipping all 13 Division and 33 contract inspectors would range between about \$47,400 and \$114,500. In addition, the Division would incur costs to obtain appropriate software to record and transfer inspection data. However, these one-time costs would be offset by ongoing savings in personal services costs, at least \$37,000 each year, because the Division's administrative assistant would no longer be required to enter all the inspection data.

Moving to the use of electronic devices for recording and reporting inspection results would have several benefits. These include:

- Increased accuracy of inspection data in CDMS because inspection results would be electronically recorded as the inspections are conducted and transferred or uploaded from the laptops to CDMS. However, even with electronic reporting

the Division should implement processes to periodically review a sample of data in the CDMS to ensure accuracy.

- Reduced workload and costs for contract agencies because they would no longer need to prepare and submit hard copies of all their inspection reports to the Division.
- Reduced space needs to store hard copies of the reports at the Division.

We believe the Division should continue to explore ways to automate its on-site inspection reports. Changes in licensing fees, as discussed in Chapter 3, may provide funds to help cover the costs of automating inspection reports.

Recommendation No. 9:

The Department of Public Health and Environment should pursue methods to automate the recording and reporting of inspection results by Consumer Protection Division and contract agency staff. Until such a system is in place, the Department should develop a process for periodically reviewing the accuracy of data entered into the Consumer Data Management System.

Department of Public Health and Environment Response:

Agree. Implementation: July 2005. Full implementation of methods of automation will be pursued dependent the availability of other additional resources by July 2005. Until such a system is in place, the Division will develop and implement a process for periodically reviewing the accuracy of data entered into the CDMS by July 2003. The Division will pursue methods to automate the recording and reporting of inspection results.

Inspection Frequency

As part of the audit, we evaluated the frequency of inspections conducted on retail food establishments, milk and dairy businesses, wholesale food manufacturing and storage facilities, child care centers, schools, correctional facilities, non-community groundwater

systems, and artificial tanning facilities. In the following sections, we discuss our findings related to the frequency of inspections.

Retail Food Inspections at Six-Month Intervals

The FDA’s Food Code states that regulatory agencies “shall inspect a food establishment at least once every six months.” Colorado’s State Board of Health adopted an inspection frequency requirement for retail food establishments that is consistent with Food Code. Specifically, the *Colorado Retail Food Establishment Rules and Regulations* require that most retail food establishments be inspected “at least once every six months.” Restaurants, grocery stores, correctional food service facilities, and food programs for the elderly all fall under the six-month inspection requirement.

During the audit we evaluated whether inspections conducted by the Division and a sample of contract agencies in Fiscal Years 2001 and 2002 were completed within the six-month time requirement specified in regulations. Our sample consisted of 6 of the 18 contract agencies, including those with both large and small inventories of establishments that they are responsible for inspecting. The table below shows that nearly 60 percent of inspections conducted in Fiscal Years 2001 and 2002 did not meet the time requirement specified in the regulations.

Retail Food Inspections That Were Not Conducted Within the Six-Month Time Requirement in Fiscal Years 2001 and 2002						
Regulatory Agency	Fiscal Year 2001			Fiscal Year 2002		
	Number of Inspections	Inspections Not Conducted Within Time Requirement		Number of Inspections	Inspections Not Conducted Within Time Requirement	
		Number	Percent		Number	Percent
Division	936	570	60.9%	1,163	699	60.1%
Contract Agencies ¹	1,126	643	57.1%	1,464	817	55.8%
TOTALS	2,062	1,213	58.8%	2,627	1,516	57.7%

Source: Office of the State Auditor’s analysis of data obtained from the Consumer Data Management System (CDMS).
¹ The figures for contract agencies represent a sample of 6 of the 18 agencies.

Division management have interpreted the six-month inspection requirement to mean that two inspections must be conducted during each fiscal year – the first inspection in the first

six months of the year and the second inspection in the second six months. This interpretation is more liberal than the rules indicate because up to 12 months could elapse between routine inspections on a retail food establishment (e.g., one inspection could occur in July and the next the following June). The contract established with local agencies is consistent with this interpretation, which requires local agencies to inspect most retail food establishments at least two times each year. No time requirements are specified in the contracts. We evaluated the frequency of retail food inspections performed by the Division and sample contract agencies using the Division's interpretation and still found that a significant number of required inspections were not performed in Fiscal Years 2001 and 2002. Specifically, about 18 percent of the required inspections in Fiscal Year 2001 and 12 percent in Fiscal Year 2002 were not performed by the Division and contract agencies. Further, we found that 31 percent of the firms regulated in Fiscal Year 2001 and 21 percent in Fiscal Year 2002 did not receive at least one required inspection.

Unlike frequency requirements specified in the FDA's Food Code and the Department's rules, the Division's approach does not provide for a specific time interval for conducting retail food inspections. As mentioned earlier, this has resulted in some establishments' not receiving inspections for one year or more, which can affect the Division's and contract agencies' ability to protect public health. We believe the Department should work with the State Board of Health to align the Division's practices with retail food inspection frequency requirements specified in the rules, FDA's Food Code, and the contracts established with local agencies. The Department should establish inspection intervals for retail food establishments that are clearly measurable.

Retail Food Inspections at One-Year Intervals

For firms on a one-year inspection schedule, which includes convenience stores, school food service facilities, and seasonal establishments, we determined the number of routine inspections conducted by the Division and a sample of contract agencies at any time during the period June 1, 2000, through July 31, 2002. As noted above, we selected 6 of the 18 contract agencies to review. The following table shows that, overall, about 7 percent of the firms in Fiscal Year 2001 and 10 percent in Fiscal Year 2002 did not undergo the number of inspections required.

Retail Food Establishments on an Annual Inspection Schedule That Did Not Receive All of the Required Inspections in Fiscal Years 2001 and 2002						
Regulatory Agency	Fiscal Year 2001			Fiscal Year 2002		
	No. of Active Firms	Firms Not Receiving All Required Inspections²		No. of Active Firms	Firms Not Receiving All Required Inspections²	
		Number	Percent		Number	Percent
Division	420	23	5.5%	430	50	11.6%
Contract Agencies ¹	245	24	9.8%	273	19	7.0%
TOTALS	665	47	7.1%	703	69	9.8%

Source: Office of the State Auditor’s analysis of data obtained from the Consumer Data Management System (CDMS).

¹ The figures for contract agencies represent a sample of 6 of the 18 agencies.

² We found that eight firms in the Division’s inventory (2 percent) and five firms in the sample agencies’ inventories (2 percent) did not undergo any inspections during the period reviewed.

Frequency of Retail Food Inspections Conducted by Local Health Departments

We also reviewed a sample of retail food establishments regulated by four local health departments we visited during the audit. Our evaluation of the frequency of inspections performed at these establishments found that:

- Two local health departments, which use risk-based inspection systems as allowed by the *Colorado Retail Food Establishment Rules and Regulations*, generally complied with frequency standards established through their risk-based systems.
- One health department, which also uses a risk-based system, reassesses risk for retail food establishments following each inspection, which affects the timing of subsequent routine inspections. Because inspection frequency requirements for establishments can change often, we were unable to determine whether this health department met the frequency standards established through its risk-based system.
- One health department follows the frequency standards specified in the *Colorado Retail Food Establishment Rules and Regulations*. We found that in Fiscal

Year 2002 this health department did not conduct at least one required inspection for 3 of 23 firms (13 percent) in our sample.

Frequency of Other Types of Inspections

In addition to reviewing how often the Division and a sample of contract agencies inspect retail food establishments, we evaluated the frequency of inspections of other facilities regulated by the Division. Overall, we found the Division inspected all correctional facilities on schedule in Fiscal Years 2001 and 2002. Over the same period, virtually all inspections of milk/dairy plants and producers were completed in accordance with required frequencies. For other facilities, we found that between 14 and 28 percent of targeted inspections were not done on schedule. Specifically:

- **Non-community groundwater systems:** For Fiscal Years 2001 and 2002, about 28 and 19 percent, respectively, of systems that were targeted for annual inspections were not inspected.
- **Schools:** For Fiscal Years 2001 and 2002, about 26 and 14 percent, respectively, of schools that were targeted for annual inspections were not inspected.
- **Child Care Centers:** For Fiscal Years 2001 and 2002, about 20 and 15 percent, respectively, of child care centers that were targeted for annual inspections were not inspected.
- **Artificial Tanning Facilities:** For the period June 1999 through July 2002, about 14 percent of the 386 facilities in business during the three-year period did not receive any inspections. Division management stated as part of their annual workload assignments, they determine that approximately 120 facilities will be inspected each year. Using the Fiscal Year 2002 artificial tanning inventory, we estimate that it will take about four years to inspect all facilities.
- **Wholesale Food Storage and Manufacturing:** For Fiscal Years 2001 and 2002, the Division inspected an average of 132 businesses each year. At about 132 businesses inspected each year, it will require about six years to inspect all firms.

Local health departments do not inspect any milk or dairy businesses, correctional facilities, wholesale food manufacturers, or artificial tanning facilities, and do not report on the

number or frequency of inspections on child care centers, schools, or non-community groundwater systems. As a result, we do not have data on the facilities they regulate.

Ongoing Monitoring

Division managers use a quarterly report generated from the Division’s Consumer Data Management System (CDMS) to monitor the number of retail food, child care, and school inspections conducted by the Division and contract agencies. This report compares the number of inspections conducted with the number that should have been completed as of each quarter. This report is primarily used to monitor contract agencies’ completion of required inspections. According to their contracts, if a local agency fails to complete at least 90 percent of its required inspections during the year, the Division will withhold all or a portion of the last quarter’s payment. In Fiscal Year 2002 one contract agency did not meet the 90 percent completion rate and the Division did withhold the last quarter’s payment.

The following table shows the type of data contained in the report.

Example of the Fiscal Year 2002 Inspection Progress Estimate Report Used by the Division to Monitor the Completion of Inspections								
County	Firm Type	Total # Firms	# of Firms by Assigned Inspection Schedules			# of Inspections Due in FY 2002	# of Inspections Completed in FY 2002	Completion Rate
			180 Days	1 Year	3 Years			
County A	Child Care	14	0	14	0	14	12	85.71%
	Retail Food	85	61	24	0	146	120	82.19%
	Schools	10	0	6	4	7	10	142.86%
	TOTALS	109	61	44	4	167	142	85.03%
County B	Child Care	7	0	7	0	7	6	85.71%
	Retail Food	39	16	23	0	55	45	81.82%
	Schools	10	0	6	4	7	5	71.43%
	TOTALS	56	16	36	4	69	56	81.16%

Source: CDMS Report entitled *Inspection Progress Estimate - Direct Service for 7/1/01 to 6/30/02*.

We found that the report does not contain sufficient detail to allow Division management to thoroughly monitor compliance with inspection frequency requirements. For example, Division managers cannot determine:

- Whether inspections of each type of firm are conducted within required time frames. For example, because the report does not indicate the number of retail food firms on the annual inspection schedule that has been conducted, the Division cannot determine if this category of inspections is progressing appropriately throughout the year.
- The amount of time elapsed between inspections. For example, the report does not show whether each retail food firm on the six-month inspection schedule is being inspected once every six months.
- In what program areas inspections are not being completed. When the report indicates that inspections are lagging behind, the lack of detail prevents Division management from pinpointing specific problem areas.

In addition to weaknesses in the report format and detail, another drawback of using this mechanism to monitor inspection frequencies is that it does not contain any information from local health departments. Currently there are no requirements for local health departments to report to the Division on the number and frequency of inspections they conduct. The Division should require reporting as part of effective oversight of its delegations to local health departments.

By collecting and monitoring data on whether all firms undergo the required number of inspections and the period between inspections, the Division could better identify agencies and inspectors not meeting the frequency requirements and take appropriate remedial action. Such remedial actions could include:

- Revising performance requirements for contract agencies to reflect whether inspections are being conducted within appropriate time frames.
- Modifying frequency requirements in rules and regulations, as necessary.
- Enforcing all contract requirements.
- Providing additional training to all inspectors.
- Pursuing employment sanctions.
- Rescinding its regulatory delegation to organized health departments.

Recommendation No. 10:

The Department of Public Health and Environment should improve its monitoring of the frequency of inspections by:

- a. Requiring local organized health departments to regularly report information on the number and frequency of inspections conducted.
- b. Developing and using reports in the Consumer Data Management System to identify agencies and individual inspectors that are not completing inspections in accordance with required time frames.
- c. Taking appropriate remedial action for failure to meet established frequency requirements.
- d. Working with the State Board of Health to align the Consumer Protection Division's practices with retail food inspection frequency requirements specified in the Department's rules, the FDA's Food Code, and contracts established with local agencies.

Department of Public Health and Environment Response:

- a. Partially agree. Implementation: July 2004. The Department delegates inspection activities for retail food, including established frequencies, to organized local health agencies. This delegation gives organized local health departments the responsibility to set the frequency of inspection requirements according to the regulation and to monitor their own staff to determine whether inspections are completed by the established frequency.

Inspection frequency set for childcare inspections is not monitored for completion for organized local health agencies. Methods to accomplish this monitoring can be evaluated by July 2004.

The regulations stipulate a recommended (not required) frequency of inspection for schools. As a result, resources will be used to monitor inspection frequencies that are required for other programs.

- b. Agree. Implementation: July 2005. The Division will work on the development of reports in CDMS to identify contract agencies and Division inspectors that are not conducting inspections within required inspectional frequencies. This recommendation will be piloted beginning July 2004 and fully implemented by July 2005, dependent upon the availability of other additional resources.
- c. Agree. Implementation: July 2004. The Division is evaluating remedial actions that will be most effective to meet established frequencies and applicable training will be developed and implemented by July 2004.
- d. Partially agree. Implementation: July 2004. The Division will align the Department rules and county contracts to have the same inspection frequency requirements by July 2004. Alignment with the FDA Food Code does not facilitate the most efficient use of State resources because the FDA Code does not provide for increased efficiencies associated with inspection frequencies and travel.

Risk-Based Inspections

As discussed in the prior section, our analysis of inspection frequency indicated that many inspections do not occur on the time intervals that are mandated or targeted. Variations in the frequency of inspections may be appropriate if they reflect the risk each facility poses to public health. Risk-based systems can be used by regulatory agencies to achieve this purpose. As mentioned earlier, the *Colorado Retail Food Establishment Rules and Regulations* allow the Division and local agencies to use a risk management system for retail food inspections. The Division has made recent efforts to develop a risk-based system and was working on a risk-based assessment tool during the audit. The Division intends to implement the system in part to reduce its inspection workload by 20 percent. However, as we will discuss later in this chapter, the Division's retail food establishment inventory decreased by about 5 percent in 2002, while staff resources have remained the same in recent years.

The assessment tool uses the following four factors to determine the risk rating of an establishment:

- **The food risk factor** identifies whether the establishment is serving food that is considered high-risk (e.g., sushi with raw or undercooked fish); medium-risk (e.g.,

green chili); low-risk (e.g., deli or sandwich meats and cheeses); or very low-risk (e.g., precooked hot dogs).

- **The operations factor** considers certain food preparation and storage processes used by the establishment (e.g., cooling hot foods that were prepared in advance); the existence of a presumptive or confirmed foodborne illness in the past year; whether highly susceptible populations (e.g., children or the elderly) are served; and whether staff have formal food safety/sanitation training.
- **The inspection history factor** determines the number of critical item violations (e.g., cross-contamination of foods, failure to hold foods at the proper temperatures, and evidence of insects or rodents) and noncritical item violations (e.g., foods not properly labeled, unclean food-contact surfaces, and refrigeration units lacking accurate and conspicuous thermometers) identified during routine inspections in the designated year.
- **The weekly volume factor** determines the number of meals served on a weekly basis.

Point values are assigned to each factor, and the total number of points determines the risk rating of the establishment. The frequency of inspections and interventions for an establishment is determined by the risk rating, as shown in the table below.

Recommended Number of Contacts Each Year Based Upon Risk Rating Assigned by the Division’s Retail Food Risk Assessment Tool	
Risk Rating	Recommended Number of Contacts Per Year
1 (low)	Phone contact ¹ , complaint-basis inspection only
2	1 routine inspection
3 ²	2 routine inspections, or 1 routine inspection and 1 intervention ³
4 (high) ²	3 routine inspections, or 2 routine inspections and 1 intervention, or 1 routine inspection and 2 interventions
<p>Source: Risk Assessment Worksheet created by the Consumer Protection Division.</p> <p>¹ A phone contact is required at least once per year to ensure that the establishment management/ownership and the nature of the food operations have not changed.</p> <p>² For risk ratings 3 & 4, individual inspectors decide whether to conduct inspections or use alternative interventions based on analysis of risks posed by the establishment.</p> <p>³ Interventions include any type of contact with an establishment other than a routine or follow-up inspection or enforcement actions. Specifically, interventions include inspections where only critical item violations are identified, announced inspections, consultations, and training.</p>	

As discussed earlier, several local health departments in Colorado use risk-based systems to determine the frequency of retail food inspections. In fact, the risk-based model that the Division is currently developing is based on one created by a local health department. Additionally, we found that four other states that we contacted (Arizona, Kansas, New Mexico, and Washington) use risk-based systems at the state and/or county levels to determine the frequency of retail food inspections. These states determine an establishment's risk rating using factors that are similar to those in Colorado's assessment tool. For instance, Arizona's assessment assigns one of three risk ratings (complex, moderate, or simple food preparation facilities) based on an establishment's food service operations. Kansas assigns one of seven risk ratings based upon the types of foods served by the establishment as well as upon its food service operations.

In audit reports from both 1988 and 1997, we recommended that the Division implement a risk-based approach for its retail food inspection program. We continue to encourage the Division to establish a risk-based system, initially as a pilot program. As part of the pilot program, inspectors from the Division and a select number of local agencies should use the assessment tool for a one-year period. During this year the Division should collect information internally and from participating contract agencies to evaluate the system. Once the pilot program has ended, the Division should evaluate the risk-based system, which should include determining if the assessment tool ensures that each retail food establishment receives the appropriate inspection coverage to reduce and prevent incidents of foodborne illnesses. Further, the Division should determine how using a risk-based system impacts its resource needs, particularly whether such a system increases or decreases the staff resources needed. Based on the results of this evaluation, the Division should modify the assessment tool, if necessary, and then implement the system statewide.

Other Inspection Programs

At the time of our audit, the Division and contract agencies did not use risk-based systems for inspecting schools, child care centers, artificial tanning facilities, non-community groundwater systems, correctional facilities, and milk and dairy businesses. However, some efforts have been made to prioritize certain types of inspections. For example:

- The Division and counties prioritize school inspections by inspecting schools that have laboratories or workshops annually while inspecting all others once every three years.
- Tri-County Health Department does not conduct inspections of laboratories and workshops at schools that employ an on-site risk manager. They hold the risk manager responsible for ensuring that labs and workshops are safe.

- Tri-County Health Department inspects child care centers every two years rather than annually. This health department has not reported any negative outcomes from inspecting child care centers every two years, indicating that a less-frequent schedule may provide adequate public protection. However, a truly risk-based approach would require the evaluation of risk factors to determine the appropriate inspection schedule for each center.

In addition, for milk producers the federal Food and Drug Administration's (FDA) *Grade "A" Milk Ordinance* gives states the option of using a "performance-based inspection system" in lieu of the traditional routine inspection system. Currently all inspections of milk producers in Colorado are conducted on the standard six-month frequency stipulated in the ordinance.

We believe the Division should consider using risk-based systems for inspections of all regulated firms and facilities. By prioritizing inspections based on risk, the Division and local agencies could make better use of their resources and strengthen their protection in these areas. In addition, as with retail food inspections, the Division should monitor the frequency of inspections conducted by its own staff and those from contract agencies on an ongoing basis.

Recommendation No. 11:

The Department of Public Health and Environment should consider implementing risk-based systems for the Division's inspections programs. This should include:

- a. Using the retail food risk-based assessment tool internally and through a select number of local agencies for a one-year pilot period, evaluating the effectiveness of the system at the end of the pilot period, and correcting any weaknesses identified. The Department should then expand its use of the system to all contract agencies and local organized health departments and provide training and ongoing assistance on the use of the system.
- b. Evaluating whether a risk-based inspection system should be used for child care centers, schools, correctional facilities, milk and dairy facilities, and non-community groundwater systems. On the basis of the results from this evaluation, the Department should develop and implement risk-based systems for these types of inspections.

Department of Public Health and Environment Response:

- a. Agree. Implementation: July 2004. The risk-based inspection tool is being piloted internally in two direct service counties and the pilot will expand to all direct service counties by July 2003. The Division is providing training and ongoing assistance to local health agencies and will encourage the use of the tool in contract counties and local organized health departments by July 2004.
- b. Agree. Implementation: July 2004. The Division will evaluate the programs for the use of risk-based inspection systems and implement the findings by July 2004.

Inspection Workload

As indicated earlier, the frequency of inspections performed by the Division is dictated by the availability of resources. According to Division management, the number of untimely inspections performed by the Division and contract agencies is largely due to limited resources. As part of the audit, we conducted a limited evaluation of the Division's workload.

First, we reviewed data related to the Division's inventory in the last three fiscal years and determined changes in the number of facilities regulated by the Division and the number of inspections required each year. We found that:

- The total number of facilities regulated by the Division increased by 9 percent, or about 260 facilities, between Fiscal Years 2000 and 2002. We estimate that 2,825 facilities were in the Division's inventory in Fiscal Year 2000, and about 3,085 in Fiscal Year 2002.
- The total number of required inspections increased by 5 percent, or about 130 inspections, during this time period. We estimate that about 2,865 inspections were required in Fiscal Year 2000, and about 2,995 inspections in Fiscal Year 2002. It is important to note that some facilities require two or more inspections each year, while others do not require annual inspections (e.g., artificial tanning facilities, which are on a three-year inspection schedule). As a result, we estimate that 1,875 facilities in Fiscal Year 2000 and about 2,065 facilities in Fiscal Year 2002 required at least one inspection during these years.

The number of facilities and inspections increased, in part, because the Division added more than 200 non-community groundwater systems to its inspection workload in 2001. It is important, however, to note that the number of retail food establishments regulated by the Division decreased by 60 establishments (5 percent) from Fiscal Years 2000 to 2002. One reason for this drop is that one county served by the Division in Fiscal Year 2000 became a contract agency and began conducting its own retail food regulatory activities in February 2002. About 50 retail food establishments were licensed in this county.

Second, we compared the Division's FTE with the number of firms requiring inspections each year. As discussed in the Overview, the Division was appropriated nearly 28 FTE in Fiscal Year 2003. The Division's FTE appropriation has remained the same during the last several years. The Division reports that it employs 6 supervisors, 3 lead workers, 13 field inspectors, and 6 administrative staff. As mentioned earlier, we estimate that the Division is responsible for performing regulatory activities related to approximately 2,065 firms throughout the State each year. This means that, on average, there is one FTE to every 74 facilities regulated.

We identified concerns with the Division's allocation of FTE among Division functions. Specifically, we evaluated the Division's organizational structure and found that with six supervisors, there is one supervisor for every 4.5 employees in the Division as well as one supervisor for every two field inspectors. We believe the Division should evaluate whether shifting more of the inspection workload to supervisors and lead workers would be a viable option for improving the frequency of inspections. We also noted that 6 of the 28 FTE (21 percent) within the Division are administrative and support staff. Because the Division only tracks staff time for a few programs that are not supported with general funds, we were unable to determine whether all of these FTE are needed to accomplish the Division's activities. The reassignment of tasks and uses of new technology (e.g., automating inspection reports) may reduce the Division's need for some of these resources.

In addition, we determined the average number of firms assigned to each of the Division's field inspectors each year and compared this figure with local health departments' workloads. We estimate that, on average, each field inspector within the Division is assigned about 159 firms to regulate each year (2,065 firms divided by 13 field inspectors). Division management report that they assign 4 FTE to conduct inspection activities for retail food establishments, which means that an average of 270 retail food establishments are assigned to each FTE (1,080 firms divided by 4 FTE). However, we do not know whether this FTE allocation is accurate because, as we discuss below, the Division does not track FTE by program activities (e.g., retail food, milk and dairy, child

care). We also determined the average number of retail food establishments assigned to field inspectors in two local health departments we visited during the audit and found that:

- One local health department's retail food caseload consists of nearly 2,400 establishments that require at least one routine inspection each year. This local health department has assigned 11 FTE to perform retail food inspections, which means that each inspector is assigned, on average, about 220 firms.
- Another health department has an annual retail food caseload of approximately 2,000 establishments and employs 11 FTE under its retail food inspection program. This means that each inspector at this health department is assigned an average of 180 firms to regulate on an annual basis. Retail food inspectors are also responsible for performing inspections of swimming pools in their jurisdiction, which reduces the amount of time they are available to conduct retail food inspections.

It is important to note that this comparison is based only on the number of establishments regulated by the Division and local health departments and does not reflect the total number of inspections required annually or the amount of time associated with each inspection. We were unable to conduct a detailed comparison of inspection caseloads because the Division tracks FTE by fund and not by any given activity. The Division uses the Department's timekeeping system, which tracks activities that are paid for with federal and cash funds (e.g., wholesale food manufacturing and storage, artificial tanning). However, this system does not track time spent on activities paid for with general funds, which is 70 percent of the Division's budget. As a result, the Division does not have a system in place to fully track the amount of time spent by each inspector on various types of inspections (e.g., retail food, milk/dairy, child care), assistance provided to and oversight of local agencies, administrative tasks, and training. Such information would be helpful for evaluating the efficient uses of the Division's resources and comparing the Division's workload with other regulatory agencies in the State.

Overall, we believe the Division needs to determine whether it is using its resources in the most effective and efficient ways. To accomplish this, the Division will need to develop a timekeeping system that tracks the amount of time staff spend on various activities, such as inspections, administration, and training. Upon implementing such a system, the Division should use the data to evaluate how staff spend their time and identify ways to improve the use of its staff resources. Additionally, as discussed earlier, the Division should determine how the use of risk-based systems affects its resource needs.

Recommendation No. 12:

The Department of Public Health and Environment should determine whether it uses its Consumer Protection Division resources in the most efficient and effective ways by:

- a. Developing and implementing a system for tracking the amount of time that all Consumer Protection Division staff spend on all activities, including inspections, administration, and training.
- b. Evaluating the data retrieved from the timekeeping system and identifying ways to improve its use of its resources.
- c. Determining how the use of risk-based systems affects the Consumer Protection Division's resource needs.
- d. Presenting the results of its evaluations of how inspection resources are used by the Consumer Protection Division to the General Assembly.

Department of Public Health and Environment Response:

- a. Agree. Implementation: July 2004. The Division will develop and implement a system for tracking the amount of time staff spend at the program level and the associated administrative costs by July 2004.
- b. Agree. Implementation: July 2005. A year's worth of data is needed in order to evaluate Division resources from the data collected pursuant to 12a and will be implemented by July 2005.
- c. Agree. Implementation: January 2006. One year of data will be used and evaluated for retail food program by January 2005 pursuant to 11a. Data for other Division programs will be available and evaluated pursuant to 11b by January 2006.

- d. Agree. Implementation: July 2005. All of these activities will be coordinated with the involvement of the Joint Budget Committee staff and the results of the evaluations of how inspection resources are used will be presented in a written report to the General Assembly or through the appropriate legislative committees by July 2005.
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Fee Assessments

Chapter 3

Funding

As discussed in the Overview chapter, a portion of the Consumer Protection Division's budget is covered by cash and federal funds that are intended, at least in part, to pay for the costs of certain regulatory functions. The following table shows the sources and amounts of these funds.

Cash and Federal Funds Collected by the Consumer Protection Division for Fiscal Year 2002	
Source	Amount Collected
Retail Food Establishment Licensing Fees - \$44 to \$310 annually ¹ (per Section 25-4-1607, C.R.S.).	\$411,653 ²
Artificial Tanning Facility Licensing Fees - \$120 annually (per Section 25-5-1004(2)(a), C.R.S.)	\$53,460
Wholesale Food and Shellfish Contract with the FDA	\$102,654
Consumer Product Safety Contract with CPSC	\$7,628 ³
Total	\$575,395
<p>Source: Office of the State Auditor's analysis of the Colorado Revised Statutes and data provided by the Department of Public Health and Environment.</p> <p>¹ Statutes charge licensing fees for retail food establishments based on whether they prepare and serve food for immediate consumption (i.e., restaurants), for later consumption (i.e., grocery store without a deli), or both, and on seating capacity and square footage.</p> <p>² Licensing fees collected by the Division are deposited into the State's Food Protection Cash Fund. Fees collected by local agencies are divided, with \$20 of each license fee being deposited into the Food Protection Cash Fund and the remainder being retained by the local board of health. In Fiscal Year 2002 the Division estimates that collections from retail food licenses amounted to more than \$1.6 million statewide. Fees do not apply to the City & County of Denver, which has its own fee structure.</p> <p>³ The Division's contract with the federal Consumer Product Safety Commission is awarded on a calendar year basis. To estimate the amount the Division received as part of this contract in Fiscal Year 2002, we determined the average annual contract amount for Calendar Years 2001 and 2002.</p>	

In addition to the fees shown in the table above, the Division collects a \$10 annual licensing fee from each milk/dairy plant and a \$3 annual licensing fee from each individual who samples or hauls milk. In Fiscal Year 2002 the 31 milk/dairy plants generated \$310 in license fees and the 207 licensed milk haulers/samplers generated about \$620. By statute, these fees are deposited into the State's General Fund. For a variety of other regulatory functions, the Division does not collect any fees for its activities.

Most of the Division's budget, about 70 percent, is provided from the state General Fund. As we have discussed throughout this report, the Division is primarily involved in regulating the operations of various facilities in Colorado. These regulatory activities are intended to protect the public from a variety of hazards (e.g., foodborne illnesses, unsafe facilities). Businesses benefit from having established industry standards that are uniformly enforced. In the case of milk and dairy businesses that ship their products out of state, the Division's oversight is federally required. The Division's mission is similar to other regulatory agencies in the State. We reviewed funding for regulatory agencies statewide and found that the Division's funding structure is different from many other regulatory agencies in the State. For instance, the Department of Regulatory Agencies' Division of Registrations, which regulates numerous professions in the State, receives most of its funding through fee assessments. The Department of Regulatory Agencies' Divisions of Real Estate, Banking, and Financial Services are entirely cash-funded.

The passage of two bills during the 2003 Legislative Session will increase the Division's cash funding. First, Senate Bill 260 requires wholesale food manufacturers to register with the Department of Public Health and Environment each year beginning July 1, 2003, and pay an annual fee ranging between \$175 and \$300. The bill increases the Division's Fiscal Year 2004 cash funding appropriation by nearly \$197,000 and decreases its General Fund appropriation by about \$161,000. Second, House Bill 1351 increases the annual retail food license fees from a range of \$44 to \$310 to a range of \$55 to \$383 and raises the amount the Division receives from each license fee assessed by local agencies from \$20 to \$25. The bill also increases the Division's cash funding appropriation by more than \$90,000.

We believe that cash funding makes sense for the regulation of the various facilities within the Division's caseload. The Division could further expand its cash funding by pursuing additional legislation that would either establish a flat licensing fee or fees based on the costs of individual functions.

Assess a flat licensing fee to all facilities regulated by the Division to a level that would eliminate the Division's need for general funds. Under this approach, licensing fees would be calculated by dividing the total cash funds needed to operate the Division

by the number of regulated facilities. Currently the Division operates on a budget of just over \$2 million. To recover its costs, we estimate that the Department would need to collect and retain about \$100 from each facility to fully cash fund the Division's operations. We estimate that there are about 20,000 facilities that could be assessed license fees, as follows:

- **Retail food establishments** are currently assessed an annual license fee ranging between \$44 and \$310, depending on the seating capacity or the square footage of the facility. Currently, the Division receives \$20 for each license fee assessed by local agencies and the remainder of the fee is retained by the local agency. With the passage of House Bill 1351, these fees are increasing to a range of \$55 to \$383 and the Department will begin retaining \$25 of each fee assessed by a local agency beginning July 1, 2003.
- **Milk/dairy plants and milk haulers/samplers** are assessed annual license fees of \$10 for plants and \$3 for haulers/samplers. Fees collected from these businesses are remitted to the General Fund.
- **Child care centers** pay annual license fees to the Department of Human Services. No fees are assessed for regulatory functions performed by the Consumer Protection Division.
- **Schools** are not assessed license fees.
- **Correctional facilities** do not pay annual license fees. However, funds are transferred from the Departments of Corrections and Human Services to the Department of Public Health and Environment each year.
- **Artificial tanning facilities** are assessed an annual license fee of \$120.
- **Non-community groundwater systems** are not assessed annual license fees.
- **Wholesale food manufacturing and storage facilities** are currently not licensed or assessed an annual fee. However, as mentioned earlier, with the passage of Senate Bill 260, wholesale food facilities will be required to register with the Department beginning July 1, 2003 and pay an annual registration fee ranging between \$175 and \$300.

The \$100 annual fee that would need to be collected and retained by the Division is consistent with other regulated professions in the State. For instance:

- Real estate brokers are assessed an annual license renewal fee of \$134.
- Child care centers are charged by the Department of Human Services an annual license fee ranging from \$70 to \$480, depending on the number of children served at the center.
- Physicians are assessed a license fee of \$335 every two years, which means the annual amount paid is about \$168.
- Outfitters, which provide hunting and fishing services, are charged an annual license fee of \$375.

For retail food license fees, it is important to note that local agencies retain a portion of the fees collected from establishments within their jurisdictions. These fees are intended to cover costs associated with regulating these establishments. The \$100 license fee estimate mentioned earlier only covers the Division's expenses, and not those of local agencies. Additionally, local health departments historically have received state general fund dollars to help cover food regulation costs. As discussed in the Overview, this funding was eliminated in Fiscal Year 2003 due to a veto by the Governor. As a result, local health departments had to use other local funds to cover these costs, and some have considered returning their retail food programs to the Department because of reductions in state funding. To avoid the need for general fund dollars to support statewide food regulation, the Department should consider both local and Department resource needs when establishing retail food license fees.

When determining how to set licensing fees, the Department may also need to recommend statutory changes that will allow it to retain milk and dairy license fees that are currently remitted to the General Fund. These fees are not material, amounting to about \$930 in Fiscal Year 2002.

Set licensing fees for all regulatory functions based on actual costs. The Division could analyze all of its costs by function and then establish fees for all regulatory functions that would generate sufficient revenue to completely fund its operations. This approach is consistent with Section 25-5-1004, C.R.S., which establishes the fees for artificial tanning facilities and states that the funds generated are to be annually appropriated to the Department for the direct and indirect costs of regulating the facilities. Other statutes establishing licensing fees are less precise. Section 25-4-1608, C.R.S., states that the retail food license fees are to be "used to pay a portion of the cost of conducting a retail food establishment protection program" but do not specify what portion the fees should cover. Section 25-5.5-107, C.R.S., which establishes license fees for milk/dairy plants and for individuals who sample milk, does not specify whether the fee should be related to regulatory costs at all. According to Division management, milk and dairy fees are

intended to cover the administrative costs of issuing the licenses but not the costs of the inspection program. These license fees have not been adjusted in more than 25 years.

Assessing fees based on actual costs would require the ability to identify the costs associated with each of its regulatory functions. Currently the Division does not have that capability. In January 2001 the Division provided the General Assembly with an analysis of the fees and costs of the retail food program, in accordance with a statutory requirement. The Division's analysis concluded that fees were covering about 27 percent of costs at the time (using 1999 data) and recommended increases of about 37 percent. The Division did not pursue legislation to implement this recommendation.

We found the Division's analysis was incomplete in that it did not contain any information on the Division's own retail food inspection program and the data from local agencies were not verified. When we attempted to analyze the costs of the Division's various regulatory programs, we found that the Division does not compile the following data for all of the individual programs that it administers, which are needed to calculate inspection and licensing costs associated with each individual program:

- How field inspectors spend their time, such as the amount or proportion of their time spent on inspections of various types of facilities, administrative tasks, and training. Because a majority of the Division's costs are for salaries and benefits, determining what percentage of time staff spend on activities related to the retail food inspection program is critical to determining costs.
- Costs of travel for various types of inspections and other regulatory activities. Because Division inspectors are responsible for establishments in many outlying areas of the State, they often incur costs for mileage, lodging, and meals when they visit establishments for inspections or other regulatory purposes.
- Administrative costs, such as supplies and overhead, that are attributable to the retail food inspection program.

In addition to a lack of individual program data to accurately determine its own costs, and except for purposes of the 2001 report to the General Assembly mentioned above, the Division does not collect data on the costs of local retail food inspection programs.

The Division could also determine the costs of performing follow-up inspections and, using this information, establish follow-up fees. To conduct follow-up inspections, the Division and local agencies incur costs associated with preparation, travel, on-site time, and reporting the inspection results. This is one of the Division's specific regulatory functions

for which no revenues are generated. We found that municipalities performing retail food inspections in a number of other states (including California, Montana, Utah, Washington, and Wisconsin) charge fees for follow-up inspections ranging from flat fees of between \$50 and \$200 per inspection to hourly fees of \$50 to over \$100. Instituting fees for follow-up inspections would not only help address resource issues but could also increase compliance with food laws and regulations. Currently Colorado statutes do not allow fees to be charged on a per-inspection basis. Therefore, the Department would need to propose legislation that would give the Department and local agencies the authority to assess such fees for follow-up inspections.

We believe the Department should evaluate its options for increasing cash funding for the Division's operations. As part of this evaluation, the Department should analyze its current cost and revenue situation and propose fee and funding changes to increase its cash funding to at least generate sufficient fee revenues to cover its regulation of private-sector businesses. Depending on the results of the evaluation, the Department may need to recommend statutory changes that would allow it to modify and/or add new fees assessments as well as retain milk and dairy license fees that are currently remitted to the General Fund.

Recommendation No. 13:

The Department of Public Health and Environment should evaluate alternatives for increasing cash funding for the Consumer Protection Division's operations. As part of this evaluation, the Department should analyze its current costs and revenues, and determine which facilities should be assessed licensing fees and the amount of these fees. On the basis of the information compiled, the Department should report to the General Assembly on its findings and recommendations and propose statutory changes, as necessary.

Department of Public Health and Environment Response:

Agree. Implemented and ongoing. The Department evaluated alternatives for increasing cash funding during FY 2003. As a result, the following occurred:

- Wholesale food fee legislation passed during the first General Session of the 64th General Assembly. Wholesale food is expected to be cash funded starting July 2003.

- School program will be funded through EPA grant dollars July 2003.
- During the 64th General Assembly, legislation was passed to increase retail food fees.

The Division will determine actual costs of programs pursuant to 12a and will analyze the costs for future cash funding alternatives. These activities will continue to be coordinated with the involvement of the Division's Joint Budget Committee staff and all applicable stakeholders, and will be presented in a written report to the General Assembly or through the appropriate legislative committees.

Auditor's Addendum:

Although two bills addressing fees under the Division's jurisdiction were passed this session, as the report notes, there are several types of facilities that the Division regulates that are not assessed any fees. Even with the additional monies provided by the new and increased fees, we estimate the Division will receive about 50 percent of its funding from the General Fund. The Division should expand its analysis of costs and revenues to use in considering additional funding alternatives and should commit to a date by which it will report the results of this effort to the General Assembly.

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