



## General Revenue Savings Possible in Consumer Protection Program

### *at a glance*

The Consumer Protection Program is beneficial to the state and should be continued. However, the Legislature and the department could reduce the need for general revenue and trust funds by \$4.8 million and improve program efficiency by

- increasing regulatory fees to levels that fully support program costs;
- allowing program inspectors to work four-day workweeks to reduce travel costs, implementing risk-based inspection methods for fair rides and weights and measures inspections to improve efficiency, and enacting rider misbehavior provisions to reduce fair ride accidents;
- privatizing the operation of the consumer services telephone call center and fair ride inspections;
- consolidating administration of the Lemon Law within the Department of Legal Affairs; and
- monitoring whether the program's regulation of small industries continues to provide a public benefit and considering eliminating regulation when a public benefit is no longer demonstrated.

### Purpose

State law directs the Office of Program Policy Analysis and Government Accountability to complete a justification review of each state agency program that is operating under a performance-based program budget. This report reviews the performance and identifies policy alternatives for the Consumer Protection Program administered by the Department of Agriculture and Consumer Services. Appendix A summarizes our conclusions regarding each of nine issue areas the law directs OPPAGA to consider in a program evaluation and justification review.

### Background

#### *Program description*

The mission of the Consumer Protection Program is to assist and protect consumers from unlawful, unethical, and unsafe business practices. Program staff monitor businesses and investigate consumer complaints to help ensure that laws designed to protect consumers are adhered to by businesses.

The Consumer Protection Program is divided into three functional units: the Division of Agricultural Environmental Services, the

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Division of Consumer Services, and the Division of Standards.

The Division of Agricultural Environmental Services protects consumers and the environment by helping ensure that companies and individuals applying and manufacturing pesticides and fertilizers comply with Florida law. The division regulates the mosquito and pest control industries and registers, analyzes, and licenses feed, seed, and fertilizer products to help ensure the safety of Florida's ecosystems and citizens.

The Division of Consumer Services serves as Florida's clearinghouse for consumer information, protection, and complaints. The division regulates a variety of industries, including pawnbrokers, telemarketers, health studios, ballroom dance studios, and motor vehicle repair shops (see Exhibit 1). Along with the Department of Legal Affairs, it implements portions of the Florida New Vehicle Warranty Enforcement Act (commonly known as the Lemon Law), whereby owners of new automobiles that have unresolved defects can obtain access to state arbitration if they have not received satisfactory resolution through the vehicle warranty claim dispute resolution process. The warranty claim dispute resolution process is certified and monitored by the division. The division also functions as the U.S. Consumer Product Safety Commission's agent in Florida for product recalls, inspections, and investigations.

When consumers have questions about their options and/or feel they have been wronged by a Florida business, they can call the division's toll free consumer assistance call center to obtain information about remedies available to them and referrals to other state programs with jurisdiction over their complaints. The call center helps consumers navigate through the government services available to them. In Fiscal Year 2000-01, the call center gave information and referrals to 267,727 consumers.

## Exhibit 1 The Division of Consumer Services Regulates a Variety of Industries

Regulated Industry	Number of Registrants for Fiscal Year 2000-01
No-sales calls/ solicitation	139,633
Motor vehicle repair shops	20,295
Solicitors of charitable contributions	7,678
Sweepstakes/ game promotions	4,256 <sup>1</sup>
Sellers of travel	1,714
Sellers of business opportunities	1,247
Pawnbrokers	1,079
Health studios	842
Telemarketers	406
Ballroom dance studios	154

<sup>1</sup> The Department of Agriculture and Consumer Services received responsibility for regulating sweepstakes/ game promotions as of July 1, 2001. This responsibility formerly resided with the Department of State.

Source: OPPAGA analysis of information provided by the Department of Agriculture and Consumer Services.

The Consumer Protection Program's Division of Consumer Services provides investigative services to further assist consumers in areas for which it has jurisdiction, such as disputes with motor vehicle repair shops. The division also has staff devoted to providing assistance to consumers who have complaints about a business for which there is no state regulatory program with jurisdiction.

The Division of Standards regulates several businesses and business activities. The division inspects amusement devices (e.g., fair rides) at most theme and water parks, as well as at temporary events such as fairs, carnivals and festivals.<sup>1</sup> The division also licenses, inspects, and conducts accident investigation for liquid petroleum (LP) gas businesses. The division tests the quality of petroleum, brake fluid, and antifreeze products sold in Florida to help ensure that they are safe and will not cause vehicle engine damage due to improper blending or

<sup>1</sup> Busch Gardens, Universal Studios, and Disney World are statutorily exempt from state amusement device regulation because they each employ at least 1,000 full-time employees and have full-time, in-house safety inspectors.

adulteration. Floridians and tourists purchase 7.5 billion gallons of gasoline annually.

Division staff also check gas pumps to ensure that consumers receive the amount of gas they pay for when making gasoline purchases and inspect commercial weighing and measuring devices and packaged goods produced and sold in Florida. These devices include retail scales, prescription drug balances, industrial and livestock scales, vehicle scales, and taximeters. The program also regulates the accuracy of retail price scanners and enforces compliance with truth in labeling laws for dry goods, building and construction materials, gardening products, and other products.

**Program funding**

As shown in Exhibit 2, the Legislature funds the Consumer Protection Program through a combination of general revenue and trust funds. The program was appropriated \$30,924,950 in Fiscal Year 2001-02 as well as 514 positions. This amount covers the costs directly appropriated to the program’s three divisions, but does not include an estimated \$4,374,537 in indirect costs that the department incurs on behalf of the program. <sup>2</sup>

Trust funds comprised 77% of the program’s appropriation while general revenue comprised the remaining 23%. Sources of trust fund revenues include registration fees from regulated industries such as motor vehicle repair shops, pesticide companies, pawnshops, and owners of amusement rides. Trust funds also receive proceeds of a one-eighth of one cent inspection fee levied on petroleum products sold in Florida.

<sup>2</sup> These indirect costs include agency-level support services, such as data processing, purchasing, accounting, budgeting, legal, and other administrative costs paid through the Office of the Commissioner. The department does not allocate all of these costs to its divisions. However, the department provided us with an estimate showing that if all department overhead costs were allocated, the portion attributable to this program would be \$4,374,537.

**Exhibit 2  
General Revenue Accounts for 23% of the  
Consumer Protection Program’s Appropriation**

Division	General Revenue	Trust Fund	Total <sup>1</sup>	FTE
Agricultural Environmental Services	\$3,655,759	\$11,601,391	\$15,257,150	206
Consumer Services	776,701	4,565,927	5,342,628	116
Standards	2,623,620	7,701,552	10,325,172	192
<b>Total</b>	<b>\$7,056,080</b>	<b>\$23,868,870</b>	<b>\$30,924,950</b>	<b>514</b>

<sup>1</sup> Excludes an estimated \$4,374,537 in indirect costs for department overhead.

Source: General Appropriations Act for Fiscal Year 2001-02.

**Program Benefit and  
Impact of Abolishment —**

The Consumer Protection Program is beneficial to Florida businesses, tourists, and citizens. The program promotes public health and safety and provides an oversight mechanism to protect consumers. For example, the program’s regulation of pesticides helps ensure that these products, which are inherently poisonous, are used in a manner that protects public health and the environment. The program’s inspections of amusement devices, petroleum products, and weights and measures devices are beneficial because most consumers lack the expertise and equipment needed to test these products and devices. These inspections help provide reasonable assurance that products sold by weight and volume are accurately measured and will perform as advertised.

Although larger local governments could assume some of the program’s duties if the program were abolished, the regulation provided may not be uniform and would probably not be provided to all consumers statewide. Consumers would also lose a centralized location for obtaining referrals to state programs that can assist them with business disputes if the program were eliminated.

## Program Placement —

The Consumer Protection Program is logically placed in the Department of Agriculture and Consumer Services, which has a mission of supporting Florida's agricultural economy, as well as a mission to protect Florida's consumers. Although the activities performed by the Division of Consumer Services often reside with attorney generals' offices in other states, we did not identify a compelling reason to move most of these activities to the Office of the Attorney General (also known as the Department of Legal Affairs). With the exception of the Lemon Law Program, we did not identify potential cost savings or increased efficiencies from moving the other program activities.

## Program Performance —

### *The program meets most performance standards*

The program met most legislative outcome and output standards for Fiscal Year 2000-01. The program's outcome measures assess the degree of compliance the program found for the various entities it regulates. In many cases, the program's performance during the year was better than that attained for the 1999-00 fiscal year. See Exhibit 3 for performance information using program outcomes and Appendix B for performance information using program outputs.

For example, the percentages of licensed pest control operators, feed, seed, and fertilizer products, and licensed pesticide applicators that were found in compliance with state requirements when inspected met the legislative performance standards. Performance in these areas improved from the prior year. Compliance by licensed pesticide applicators increased by 16% during the year. Program managers have not identified a clear cause for the increase in compliance, but conjecture that it may be due to the program's education and outreach efforts, increased accessibility to enforcement

information on the program's website, and/or increased efforts at compliance by the regulated industry.

The compliance rates of amusement devices and liquid petroleum (LP) gas facilities met the outcome standards for the percentage in compliance with safety standards on the first inspection. The compliance rates were better in Fiscal Year 2000-01 than in Fiscal Year 1999-00.<sup>3</sup>

However, the program does not have a valid legislative outcome measure for the activities carried out by the Division of Consumer Services. The department's inspector general has not validated the division's performance measures and department staff only recently determined that this measure is not valid.<sup>4</sup> The department has no means to calculate the *percent of regulated entities found operating in compliance with consumer protections laws*, and has been reporting invalid performance data for this measure for at least two years. This measure was intended to show the compliance rate of businesses such as motor vehicle repair shops, health studios, telemarketers, business opportunity vendors, ballroom dance studios, solicitors of charitable contributions, sellers of travel, and pawnshops.

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<sup>3</sup> Although both of these industries have low compliance rates (25% and 44%, respectively), program records do not differentiate between minor, major, and severe violations in these areas. Thus, these results cannot be interpreted to mean that all inspections that found noncompliance found serious safety problems. For example, program managers were only able to show that out of 4,781 LP gas inspections conducted during the year, the program found 70 severe violations considered to be an immediate threat to the health, safety, and welfare of the public. They did not categorize the remaining inspections in terms of the severity of the violations found.

<sup>4</sup> Although required to do so by statute, the department's inspector general has not determined the validity and reliability of all of the program's performance data. The inspector general completed an assessment of the measures relating to the Division of Standards' activities in August 2000, but has not yet done so for the program's other two divisions. However, the inspector general has conducted training for program managers. Based on a self-assessment completed by program managers, the Inspector General plans to review and make a determination for any program measure or data control system that appears to be problematic during Fiscal Year 2001-02.

Exhibit 3

The Program Met Most Performance Standards for Outcome Measures In Fiscal Year 2000-01

Division	Measure	1999-00 Actual Performance	2000-01 Actual Performance	2000-01 Performance Standard
Agricultural Environmental Services	Percent of licensed pest control applicators in compliance with regulations	78%	82%	78%
	Percent of feed, seed, and fertilizer inspected products in compliance with performance/quality standards	86%	86.8%	83%
	Percent of licensed pesticide applicators inspected that are in compliance	60%	76%	72%
	Number of reported human/equine disease cases caused by mosquitoes	5 /34	0 /14	3 /40
Consumer Services	Percent of regulated entities found operating in compliance with the consumer protection laws	Invalid data reported <sup>1</sup>	Invalid data reported <sup>1</sup>	91%
Standards	Percent of LP Gas facilities found in compliance with safety requirements on first inspection	23%	25%	20%
	Percent of amusement attractions found in full compliance with safety requirements on first inspection	41%	44%	40%
	Percent of regulated weighing and measuring devices, packages, and businesses with scanners in compliance with accuracy standards during initial inspection/testing	95.8%	96%	95%
	Percent of petroleum products meeting quality standards	99.2%	99.2%	99.2%

<sup>1</sup> The program has no means to calculate this outcome because staff do not conduct compliance inspections. Staff conduct investigations of these entities in response to complaints or other inquiries, and have been reporting the compliance rate found as a result of these investigations. This is not a valid calculation of overall industry compliance.

Source: Chapter 2000-171, *Laws of Florida*, and department documents.

The Division of Consumer Services does not conduct compliance inspections of these entities and only conducts investigations in response to complaints or other inquiries. The department has been reporting the compliance rate found as a result of these investigations, which is invalid as a calculation of overall industry compliance because it does not provide any information about the compliance rate of entities for which no complaints or inquiries were received. The Legislature should reword this measure to more accurately reflect the division’s activities and the information the division can collect, such as *percent of complaints received for which investigation resulted in identification of a business operating in compliance with consumer protection laws*.

It should also be noted that the program’s measures are high-level aggregates of

industry compliance for various activities and thus may not indicate the compliance rates of some of the lower-level categories of items and industries being evaluated. The department has internal performance information for specific types of entities or items the program regulates. For example, although the overall compliance rate for weighing and measuring devices was 96%, the majority of the devices measured were gas pumps that had a high compliance rate (97%) and tended to mask much lower compliance rates for other devices. Some other devices included in the performance calculation for this measure, such as heavy capacity scales, had a much lower accuracy rate upon initial inspection and thus warrant continued program attention. For example, only 72% of vehicle scales, 69% of livestock

scales, and 33% of crane scales were found in compliance when tested.<sup>5</sup>

## Options to Reduce General Revenue Subsidies and Improve Efficiency

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

Many of the Consumer Protection Program's activities are not self-supporting, although the Legislature's intent for the program is to charge industry fees to finance or largely offset the cost of regulation to the general revenue taxpayer. In Fiscal Year 2001-02, the program was appropriated \$7,056,080 in general revenue funds. This occurs for several reasons. In some areas, the department has not raised fees to reflect increases in program costs although authorized by law to do so. In other areas, the maximum fees authorized by law are too low to cover current program costs. Further, the department is not authorized to charge fees for weights and measures inspections, although other states charge industry fees to fund this activity.

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

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<sup>5</sup> A crane scale has a nominal capacity of 5000 pounds or greater and is designed to weigh loads while they are suspended freely from an overhead, track-mounted crane.

appropriations or oppose cost increases if paid by general revenues.

The department and the Legislature could increase or establish fees to better cover program regulatory costs in four areas—pesticide regulation; fair ride inspection; motor vehicle repair shop licensing; and weights and measures device inspection.

Pesticide regulation. The department's current pesticide-related fees do not cover its cost for regulating these products. In Fiscal Year 1999-00, the department's pesticide regulation costs exceeded its revenues by \$1,694,939.<sup>6</sup> Most of this shortfall was funded from general revenue (\$1,260,239). The department's pesticide revenues come mainly from a pesticide product registration fee.<sup>7</sup>

Although the department is required by statute to annually review applicator and dealer fees and adjust them to reflect the cost of administering the pesticide regulation program, it has not adjusted the fees since 1994. The current fees are substantially below the statutory maximums.<sup>8</sup> As shown in Exhibit 4, the department estimates that the unit cost of processing restricted-use pesticide licenses and conducting inspections and investigations is \$622 annually, yet its current

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<sup>6</sup> Pesticide-related revenues collected in Fiscal Year 1999-00 included \$3,157,415 for pesticide registrations, \$717,664 from a federal grant, and \$171,863 from administrative fines. Only \$204,123 in revenues was received from pesticide applicators and \$84,420 from pesticide dealers. Fiscal Year 1999-00 was the most recent year for which the department had the detailed revenue and expenditure data needed for this type of evaluation. We used Fiscal Year 1999-00 revenue and expenditure data throughout this report when more recent information was not available. These data include some overhead costs, but do not include department-level overhead expenses paid from general revenue.

<sup>7</sup> The current fee for registering a pesticide in Florida is \$225 per brand. The department reviews new pesticide registrations for compliance with state and federal labeling laws and impact on public health and the environment.

<sup>8</sup> Restricted-use pesticide applicator and dealer license fees are set by rule but are subject to statutory maximums. Section 487.045, *F.S.*, states that the fees shall not exceed \$250 for commercial applicators or \$100 for private applicators and public applicators, for initial licensing and for each subsequent license renewal. Section 487.048, *F.S.*, states that pesticide dealer license fees should not exceed \$250.

annualized fees for these licenses range from \$8.75 to \$150.<sup>9</sup>

**Exhibit 4  
Restricted-Use Pesticide Applicator and Dealer  
Fees Are Not at Statutory Maximums**

License Type	Current Fee	Annualized Fee	Unit Cost	Statutory Maximum Fee
Private applicator	\$35 for 4 years	\$ 8.75	\$622	\$100 for 4 years
Public applicator	\$35 for 4 years	8.75	622	\$100 for 4 years
Commercial applicator	\$90 for 4 years	22.50	622	\$250 for 4 years
Dealer	\$150 annually	150.00	622	\$250 annually

Source: OPPAGA analysis of Rule 5E-9.028, *Florida Administrative Code*, and ss. 487.045 and 487.048, *F.S.*

Some states charge substantially higher pesticide applicator fees than does Florida. For example, Arizona charges an annual \$50 fee for private, public, and commercial pesticide applicators. North Carolina charges between \$150 and \$280 annually for commercial pesticide applicator licenses. Washington charges an annual fee of \$25 for private and public licenses and \$170 for commercial pesticide applicator licenses.

The department would reduce its needs for general revenue funding for pesticide regulation by \$361,000 annually if it charged the statutory maximum fees for pesticide applicator and dealer licenses. However, this would still not cover the program’s pesticide regulatory costs. As an option, the Legislature may also want to consider revising statutes to increase pesticide product registration fees to cover the remaining costs. The registration fee would need to be set at \$322 (currently \$225) to cover the program’s Fiscal Year 2001-02 costs.

<sup>9</sup> Of this \$622, \$140 is for processing licenses and \$482 is for conducting inspections and investigations of applicators, dealers, and distributors as manufacturers, and time spent supporting these functions.

Fair ride inspections. The Legislature provides an annual general revenue appropriation of \$500,000 to the program’s fair ride inspection activities. In our opinion, these activities should be self-supporting. The amusement industry profits from operating fair rides and directly benefits from the safety inspections provided by the department. Customers benefit directly from safety inspections and there are many general taxpayers who never patronize fair rides. The amusement companies thus should be paying for the cost of state fair ride inspections.

We previously recommended that the department increase its fees to better cover program costs for fair ride inspections.<sup>10</sup> The department increased fair ride permit and inspection fees in Fiscal Year 1997-98, which enabled the program to become self-supporting in Fiscal Year 1998-99. However, the department has requested and received \$500,000 in general revenue appropriations for this activity since Fiscal Year 1999-00. After receiving this general revenue subsidy, the department twice lowered its inspection fees, on March 20, 2000, and again on December 4, 2000.<sup>11</sup> If the department had not lowered fees, it would have collected additional revenues of \$277,858 in Fiscal Year 2000-01.

We believe that the Legislature should discontinue providing general revenue to the department for fair ride inspections and the department should revise Rule 5F-8.012, *Florida Administrative Code*, to raise fair ride inspection and permitting fees to levels such

<sup>10</sup> *Review of the Amusement Device Safety Inspection Program*, OPPAGA [Report No. 94-42](#), March 1995.

<sup>11</sup> Department officials explained this action by asserting that although s. 616.242(8)a, *F.S.*, states that the department is to establish fees to cover the direct and indirect costs of the Bureau of Fair Rides Inspection, this statute also states that the industry shall pay for remaining costs to the extent that there is not sufficient general revenue appropriated by the Legislature. Department officials stated that they were obligated to lower the fair ride fees after receiving the annual \$500,000 general revenue appropriation so that excess revenues were not generated.

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as are shown in Exhibit 5. We estimated that fees at these levels would increase annual program revenues by \$501,538, and would thus eliminate the need for an annual general revenue subsidy for program fair ride inspections.<sup>12</sup>

### Exhibit 5 Increases in Fair Ride Inspection, Permit, and Other Fees Would Better Cover Department Costs for Regulation

Type of Fee	Current Fee	OPPAGA Recommended Fee to Cover Costs
<b>Permit Fees</b>		
Annual permit	\$220	\$300
Bungee permit	500	580
<b>Inspection Fees</b>		
Kiddie rides/attraction		
	\$25	\$ 50
Non-kiddie rides		
	50	100
Go karts		
	5	10
<b>Other fees</b>		
Lost tag	\$100	\$130
Late notice	100	130
Failure to cancel	100	160
Return inspection	300	360
Weekend/ holiday	25	40

Source: OPPAGA analysis of Rule 5F-8.012, *Florida Administrative Code*, and department documents.

Motor vehicle repair shop licensing. The department's costs for regulating motor vehicle repair shops exceeded its revenue for this activity by \$203,737 in Fiscal Year 1999-00.<sup>13</sup> This shortfall was funded by general revenue and other sources of revenues in the department's General Inspection Trust Fund.

The primary funding for regulating motor vehicle repair shops is an annual registration fee paid by the shops. As shown in Exhibit 6, we determined that a 25% increase in these

fees would have provided the additional revenues needed to better cover the department's costs and make up the \$203,737 shortfall.<sup>14</sup>

### Exhibit 6 Increases in Fees Paid by Motor Vehicle Repair Shops Would Better Cover Department Costs for Regulation

Size of Motor Vehicle Repair Shop Required to Pay Fee	Current Fee	OPPAGA Recommended Fee to Better Cover Costs
Shops employing 1 to 5 employees	\$ 50	\$ 63
Shops employing 6 to 10 employees	150	188
Shops employing 11 or more employees	300	375

Source: OPPAGA analysis of Florida Statutes and department documents.

Increasing the registration fees paid by motor vehicle repair shops would require amending s. 559.904, *Florida Statutes*, which limits the amount of the fees. Rather than establishing a new maximum fee, the Legislature may want to revise these statutes to require the department to periodically raise these fees as needed to cover its regulatory costs.

Weights and measures device inspections. Florida's weights and measures regulatory activities are funded primarily from general revenue. These activities had expenditures of \$2,328,595 in Fiscal Year 1999-00, with general revenue accounting for 87.8% of these costs.<sup>15</sup>

Although weights and measures activities are considered a service to general consumers, a reasonable argument can be made that the businesses using these devices should pay regulatory costs. The commercial entities are

<sup>12</sup> The department is proposing a fee increase to \$300 for annual permits and \$100 for non-kiddie rides.

<sup>13</sup> According to department records, department expenditures were \$1,283,512, while revenues were \$1,080,775, resulting in a shortfall of \$203,737. These data include some overhead costs, but do not include department-level overhead expenses paid from general revenue.

<sup>14</sup> The department does not keep historical data on the types of motor vehicle repair shops paying the fees. These data are maintained in a database that is updated as new registrations are received. We used registration data as of a point in time (May 18, 2001) to estimate the fee increases needed to make up the shortfall.

<sup>15</sup> These data include some overhead costs, but do not include department-level overhead expenses paid from general revenue.

generating profits from their sales to consumers using weights and measures devices and therefore should pay the cost of regulation.

Other states charge fees to cover the costs of regulating weights and measures devices. We identified 21 states that assess regulatory fees that cover at least part of the cost of regulating these devices. A commonly assessed fee is an annual registration fee paid for each weights and measures device placed in commercial service.

Establishing an annual \$30 registration fee for weights and measures devices would raise an estimated \$2,280,420 and fully fund the program, eliminating the need for general revenue appropriations (see Exhibit 7).<sup>16</sup> This would require the Legislature to revise Ch. 531, *Florida Statutes*, to authorize this fee.<sup>17</sup>

**Exhibit 7  
Establishing Weights and Measures Device Fees  
Would Eliminate the Need for General Revenue  
to Fund This Activity**

Type of Device	Total Devices	OPPAGA Proposed Fee to Cover Costs	Revenue Potential
Small scales	55,376	\$30	\$1,661,280
Livestock and industrial scales	10,702	\$30	321,060
Prescription scales	3,435	\$30	103,050
Vehicle scales	3,262	\$30	97,860
Taximeters	3,239	\$30	97,170
<b>Totals</b>	<b>76,014</b>		<b>\$2,280,420</b>

Source: OPPAGA analysis of information provided by the Department of Agriculture and Consumer Services.

***The department should implement a four-day workweek for program inspectors to reduce travel costs***

Several other states that conduct inspection services similar to those of the Consumer Protection Program require or allow inspectors to work four-day workweeks (four ten-hour days a week).<sup>18</sup> A primary benefit of such an arrangement is that it reduces travel costs. Most program inspectors work out of their homes and drive to inspection sites. They may not be finished with an inspection at the end of an eight-hour day and thus may need to either stay overnight or travel back to the same location to finish the next day. For example, fair ride inspectors may spend several days inspecting rides at a county fair, staying in hotels until all rides are inspected. Working a four-day week would reduce the number of hotel nights needed as well as meal per diem. Some of the other state programs using this option also report higher inspector productivity and morale because of flexibility in scheduling their days off.

This option appears to be viable for the program’s LP gas, pesticide, petroleum, fair ride, and weights and measures inspectors. These staff incurred \$744,214 in travel costs during Fiscal Year 2000-01. A 10% reduction in travel costs, which appears to be feasible given reduced hotel and meal costs, would eliminate costs of \$74,422 annually on inspections (see Exhibit 8).<sup>19</sup>

<sup>16</sup> Other states charge a variety of device fees for the different types of devices. For the states for which we obtained this information, the fees ranged from \$5 to \$600.

<sup>17</sup> Another option is to include scanner device fees with any device fees established. The department had no data on the number of scanners or businesses using scanners in Florida. We therefore could not calculate the revenue potential of this option.

<sup>18</sup> For example, Arizona, Minnesota, and Tennessee allow weights and measures inspectors to work a four-day workweek. In Colorado, large-scale inspectors work four-day workweeks. In Nebraska, North Carolina, and Iowa, inspectors are permitted to work this schedule during daylight savings time. Similarly, in Virginia, Nebraska, and Maryland, pesticide inspectors are allowed a four-day workweek.

<sup>19</sup> Cost savings for pesticide and weights and measures inspections would affect the need for general revenue funding. Cost savings for LP gas, fair ride, and petroleum inspections would affect the need for funding from the General Inspection Trust Fund.

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Some department officials expressed concerns that staff could become fatigued and lose efficiency working extended hours during hot summer days. However, part of the inspectors' time is spent indoors, and the additional hours worked each day would tend to be in the morning or late afternoon outdoors when it is cooler. (The inspectors are already working during the hottest part of summer days if they work 8:00 to 5:00 schedules.) To determine the validity of managers' concerns about loss of efficiency due to fatigue, the department should test this option by running a pilot project. If results are favorable, the department should implement this alternative statewide by July 1, 2002.

**Exhibit 8  
Inspector Travel Costs May Be Reduced as a Result of Implementing a Four-Day Workweek**

Type of Inspector	Fiscal Year 2000-01 Travel Expenses <sup>1</sup>	Estimated Cost Savings If a 10% Reduction Is Achieved
Petroleum	\$ 280,965	\$ 28,097
Weights and Measures	236,817	23,682
Pesticide	119,610	11,961
Fair Rides	75,700	7,570
LP Gas	\$31,122	\$3,112
<b>Totals</b>	<b>\$744,214</b>	<b>\$74,422</b>

<sup>1</sup> Excludes expenses for Class C travel. The 2001 Legislature eliminated reimbursement for Class C travel.

Source: OPPAGA analysis of information provided by the department.

***A risk-based inspection system would increase fair ride and weights and measures inspection efficiency***

A risk-based inspection system enables a program to concentrate its limited resources on the entities or items that are most at risk of noncompliance. Such a system is often combined with random, but less frequent, inspections of low risk areas. Risk-based inspections would be beneficial for the program's fair ride and weights and measures inspections.

Fair ride inspections. The department is currently required to inspect all temporary amusement devices each time the ride is set up or moved to a new location. All permanent amusement rides must be inspected semi-annually.<sup>20</sup>

This requirement causes two problems. First, staff must travel extensively to inspect rides multiple times as they are moved to different locations throughout the state, even though some rides pose little risk to the patron. Second, it precludes staff from more frequently inspecting rides while operating, which is when accidents occur.

Due to the requirement that rides be inspected each time they are set up, staff essentially chase rides around the state. Amusement companies generally operate a series of events throughout the year, such as various county fairs or shopping center dates. Other companies set up rides such as children's trains in shopping malls throughout the year. The companies move and set up their rides at each event, which must be inspected by program staff before the rides can be opened to the public. Small children's rides which travel in a circle on a slightly elevated platform pose a low risk of injury and yet ride inspectors must follow these rides and inspect them at the same frequency as higher risk adult rides.<sup>21</sup>

We previously recommended that the Legislature amend statutes to require the department to inspect all temporary amusement devices the first time they are set up in the state each year and periodically re-inspect them using a risk-based system.<sup>22</sup> Under such a system, the program would target its inspections based on an amusement

<sup>20</sup> As previously noted, Busch Gardens, Universal Studios, and Disney World are statutorily exempt from state amusement device regulation because they each employ at least 1,000 full-time employees and have full-time, in-house safety inspectors.

<sup>21</sup> During the time period September 2000 through April 2001, program fair ride inspectors inspected approximately 155 small events that had only kiddie rides.

<sup>22</sup> OPPAGA [Report No. 94-42](#).

company's compliance history and the potential risk that its devices pose to the public. For example, a company that operates only children's trains or other rides that pose little risk would be inspected less frequently than a company that operates more dangerous rides or that does not maintain its rides in strict compliance with safety standards.

Implementing risk-based inspections would reduce the program's workload, which could result in cost savings through lower staffing and travel needs. Alternately, staff could use this time to observe the operation of rides and enforce a rider safety law. Currently, program inspectors are only able to monitor the operation of rides as time permits after conducting required inspections.

National and state data show that a substantial percentage of fair ride accidents are caused by rider negligence or misbehavior.<sup>23</sup> To address this problem, other states have implemented rider misbehavior laws, including Ohio, Pennsylvania, Maine, and Missouri. These laws require riders to obey posted rules and warnings, refrain from acting in any manner that may cause or contribute to injuring the patron or others. Failure to do so could result in a misdemeanor charge or civil penalty. These laws also require patrons to report any injury sustained on a ride before leaving the premises. The ride owner would be required to display a sign at a conspicuous location clearly visible to the public. Staff could use time freed up from conducting low-risk inspections to monitor compliance with this law.

Adopting a risk-based inspection program and/or establishing a rider responsibility law would require the Legislature to amend Ch. 616, *Florida Statutes*.

Weights and measures inspections. Due to workload, the department is unable to meet

its objective to inspect each weighing and measuring device annually.<sup>24</sup> Currently, the department inspects most devices an average of every 14 to 18 months, rather than annually.

Other state weights and measures programs have experienced this problem and have implemented risk-based, random, and/or less frequent inspection frequency requirements. For example, Texas requires devices to be inspected at least once every three years. In Arizona, devices are inspected on a sampling and risk-based system. In Washington, devices, scanners, and packages are tested randomly; there is no time requirement for frequency of inspection.

A risk-based inspection system would enable the program to concentrate its resources on the devices and businesses most at risk of noncompliance. Businesses with a track record of maintaining their devices in compliance with state requirements would be inspected less frequently than those whose devices are found to violate state standards. This is feasible because some devices and businesses have a high compliance rate. For example, department data show that retail scanners had a 97% compliance rate in Fiscal Year 2000-01. Of the 53 businesses that failed inspection, only 27 failed due to overcharges (scanners in the remaining businesses undercharged consumers). Because of this high compliance rate, the department could decrease the number of scanner inspections and instead concentrate on devices and businesses with high noncompliance rates without adversely affecting consumer protection.

### ***Privatizing the call center is feasible***

Telephone call centers are a service that is increasingly contracted out by both private companies and government agencies. For example, other Florida state agencies have contracted out for telephone call center

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<sup>23</sup> Department data show that 80% of reportable accidents in Fiscal Year 2000-01 were caused by patron error.

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<sup>24</sup> There is no statutory requirement governing the inspection frequency of weights and measures devices.

## *Justification Review*

services. The Agency for Health Care Administration recently consolidated its call centers for consumers who want to gain access to public documents and submit complaints against Health Maintenance Organizations, health care facilities, and practitioners. The agency contracted with a private company to operate the new call center. Similarly, the Department of Highway Safety and Motor Vehicles (DHSMV) has entered into a partnership with Jefferson Correctional Institution whereby inmates answer basic questions relating to driver licenses. The inmates relieve workload for DHSMV staff.

It would be feasible to privatize the consumer services call center. The center has 20 staff and gave information and referrals to 267,727 consumers in Fiscal Year 2000-01, at a unit cost of \$1.40 per call. Vermont's consumer services program contracted with a state university to operate its call center. In this system, students attend a consumer assistance class, work on the hotline, and receive credit hours in return for providing these services.

Potential costs savings cannot be reliably determined until bids are received from private vendors. To pursue privatizing the consumer services call center, the department should solicit bids for private vendors and enable its current staff to submit a bid to retain the work in-house. The department will need to establish strong performance standards for the operation and a strong monitoring system; the costs of this monitoring should be considered in making the decision on whether it is cost-effective to privatize the services.

### ***Contracting with private entities to conduct fair ride inspections should be carefully considered***

The reduction version of the department's Long-Range Program Plan for Fiscal Year 2001-02 to 2005-06 proposes terminating all 15 fair ride inspection positions and contracting

with private entities to conduct fair ride inspections in Fiscal Year 2005-06. Under this alternative, private consultants, rather than the state, would inspect temporary amusement devices at each set-up and conduct the semi-annual inspections of permanent amusement devices. Various entities are currently available in the private market to conduct fair rides inspections. These entities include private engineers and insurance inspectors. If the department chooses to contract with private entities, we believe it should retain one inspector to provide oversight of the inspection work of the private inspectors.

Although this is an area in which privatization is possible, there are some caveats to be carefully considered before proceeding. For example, it is currently not clear whether state costs would be lower using private inspectors. Cost data provided to us by various private engineers who conduct fair ride inspections indicate that the cost of these services and the basis for assessing charges can vary widely. For example, one engineer quoted a price of \$50 per child ride and \$90 per adult ride, another quoted a price of \$1,500 per day, while another engineer quoted \$4,500 per park. In comparison, the department conducts fair ride inspections for an average unit cost of \$140.40 per ride.

Another consideration is that there have been problems in other states with the quality of inspections conducted by private inspectors.<sup>25</sup> To help deter this type of problem, we recommend that if the Legislature and the department choose to proceed with privatization, that the private inspectors operate as agents of the state and that the department establish performance-based standards in its contracts with the private inspectors. The inspectors should be

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<sup>25</sup> In Texas, a private inspector was convicted of manslaughter as a result of a fatality on a ride he inspected. During his inspection, he found that four of the ride's cars had broken mechanisms and another car had a broken seat. He ordered that those cars not be used, but allowed the ride to open.

required to meet state training or certification qualifications and follow state inspection standards. To help ensure the quality of the inspection work of the private inspectors, the department should conduct limited random unannounced inspections of the amusement devices. The amusement companies would still be required to pay their permit and inspection fees to the department.

Current statutes specify that the department should conduct the inspections of temporary amusement devices at each set-up and the semi-annual inspections of permanent amusement devices, and provides for inspections by private entities for other purposes. If the Legislature wants to privatize this state function, it would need to revise s. 616.242, *Florida Statutes*, to authorize the department to contract with private inspectors to conduct these inspections.

Should the Legislature make this statutory revision, the department should proceed cautiously with privatizing fair ride inspections. To ensure that contracting for fair ride inspections results in lower state costs overall, the department would need to evaluate its current costs for inspecting each type of amusement device, estimate its contract monitoring costs should these services be contracted out, and solicit bids for private vendors or other entities willing to provide these services more cost-effectively and in a manner in which the program can make cost comparisons. In awarding the contract, the department should include its contract monitoring costs when evaluating cost proposals and ensure that contracted services will be less costly than current state costs and of the same or higher quality.

***Administration of the Lemon Law should be consolidated within the Department of Legal Affairs***

Consolidating administration of the Lemon Law within the Department of Legal Affairs would result in cost savings from staffing reductions. The Department of Legal Affairs

administers the Lemon Law Arbitration Program. The Department of Agriculture and Consumer Services initially screens complaints from dissatisfied owners of new cars and forwards those qualifying for arbitration to the Department of Legal Affairs, along with those rejected for arbitration. Department of Legal Affairs staff review all of the complaints that are received, duplicating the review by the Department of Agriculture and Consumer Services staff.

Consolidating the entire program within the Department of Legal Affairs would reduce duplication and make more efficient use of state Lemon Law staffing resources. We estimate that consolidating the program would enable the state to eliminate one full-time position (reducing total staffing from eight to seven positions) and produce an estimated cost savings of \$32,687.<sup>26</sup>

Cost savings from a staffing reduction are more likely to be achieved if one agency is made responsible for administering both the Lemon Law and the warranty dispute resolution process currently administered by the Department of Agriculture and Consumer Services. By law, before being eligible for Lemon Law arbitration, consumers must first go through the warranty dispute resolution process for any manufacturer that has established a certified process with the department. The four department staff who are responsible for reviewing Lemon Law case files are also responsible for reviewing warranty dispute resolution case files.<sup>27</sup> Keeping responsibility for administering the Lemon Law and the warranty dispute resolution process within one agency promotes coordination and helps streamline the process.

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<sup>26</sup> Cost savings would affect the need for funding from the General Inspection Trust Fund.

<sup>27</sup> Department of Agriculture and Consumer Services officials were unable to provide us with FTE staffing data based on the amount of time these staff spend on Lemon Law cases versus the warranty dispute resolution process. We therefore used case file workload data to develop our staffing reduction estimate.

***The Division of Consumer Services regulates some small industries; the continued public benefit of these regulatory activities should be monitored***

The Division of Consumer Services is responsible for regulating a wide variety of industries. These include motor vehicle repair shops, health studios, ballroom dance studios, sellers of travel, pawnbrokers, solicitors of charitable contributions, sellers of business opportunities, entities that offer sweepstakes prizes, and telemarketers. The division's responsibilities for regulating these entities generally involve registering and collecting registration fees from these companies, requiring bond payments as applicable, and assisting consumers with resolving complaints against them.

Over the years, there have been efforts to deregulate some industries, such as ballroom dance studios, sellers of business opportunities, health studios, and telemarketing. The rationale for the proposed deregulation has been that these programs regulate small numbers of businesses. For example, there were 154 registered ballroom dance studios and 406 registered telemarketers in Fiscal Year 2000-01. However, there has been opposition to deregulation because the statutory registration requirements enable state attorneys to take enforcement action against fraudulent companies. Eliminating the programs would result in minimal cost avoidance, as registration fees for entities such as ballroom dance studios and health studios are currently more than sufficient to cover the department's regulatory costs.

However, as the conditions change over time, there may be a lesser need to regulate specific types of businesses in the future. The department should monitor whether its regulatory consumer protection programs continue to provide a public benefit. If these programs fail to demonstrate this benefit, the

department should recommend to the Legislature that they be eliminated.

## Recommendations

The Consumer Protection Program is beneficial to Florida businesses, tourists, and citizens. The program promotes public health and safety and provides an oversight mechanism to protect consumers.

The program met most legislative outcome and output standards for Fiscal Year 2000-01. However, the program does not have a valid legislative outcome measure for the activities carried out by the Division of Consumer Services. The department's inspector general has not validated the division's performance measures and department staff only recently determined that this measure is not valid. The department has no means to calculate the division's outcome measure as currently worded.

- The Legislature should reword the program's outcome measure *percent of regulated entities found operating in compliance with the consumer protection laws* to more accurately reflect the division's activities and the information the division can collect, such as *percent of complaints received for which investigation resulted in identification of a business operating in compliance with consumer protection laws*.

Several actions can be made to improve program efficiency and reduce costs.

- To reduce the program's need for general revenue funding, the Legislature should consider requiring the department to establish program fees at a level sufficient to cover its regulatory costs for pesticide regulation, motor vehicle repair shops, fair ride inspections, and weights and measures regulation. This will require amendments to ss. 487.041, 487.045, 487.048, *Florida Statutes*, to modify pesticide regulation fees. It will also require the Legislature to amend

- s. 559.904, *Florida Statutes* to modify motor vehicle repair shop registrations, and the department to amend Rule 5F-8.012, *Florida Administrative Code*, to modify fair ride inspection fees. The Legislature should also amend Ch. 531, *Florida Statutes*, to authorize the department to establish weighing and measuring device registration fee.
- To potentially reduce program travel costs for inspections by an estimated \$74,422 annually, the department should run a pilot test to evaluate the feasibility of having LP Gas, pesticide, petroleum, fair ride, and weights and measures inspectors work a four-day workweek. If results are favorable, the department should implement this alternative statewide by July 1, 2002.
  - To make more efficient use of fair ride inspection resources, the Legislature should revise s. 616.242, *Florida Statutes*, to eliminate the requirement that the department conduct inspections of temporary amusement devices at each set-up and inspections of permanent amusement devices semi-annually, and instead authorize the department to conduct these inspections using a risk-based system. Implementing risk-based inspections would reduce the program's workload. This would enable the department to either reduce its inspection staffing or shift these resources to monitoring fair rides while operating, which is when accidents occur.
  - The Legislature should revise statutes to establish a rider misbehavior law. This law would require the ride patrons to obey posted rules and warnings and refrain from acting in any manner that may cause or contribute to injuring the patron or others. Failure to do so could result in a misdemeanor charge or civil penalty.
  - To make more efficient use of weights and measures resources, the department should implement a risk-based inspection system combined with random sampling. The department should concentrate its resources on the devices and businesses at most risk of noncompliance.
  - To reduce program costs for operating the consumer services telephone call center, the department should contract out for call center services. To implement this option, the department should
    - (1) carefully identify its current costs to operate the call center, including overhead and monitoring costs;
    - (2) determine the cost of contract monitoring that will be needed if the service is privatized;
    - (3) develop strong performance-based standards for potential vendors and monitoring requirements that will ensure vendors provide services in manner that meets program quality and timeliness requirements; and
    - (4) solicit bids for private vendors. The department should require that vendors submit bids at a lower cost than the program's current cost of \$1.40 per call. The department could also use a managed competition approach in which state employees can bid to retain the service in-house.
  - Inspectors are available in the private market to conduct fair ride inspections, as proposed in the department's long-range program plan. However, the Legislature and the department should carefully consider whether to privatize this function. It is not clear whether state costs would be reduced due to the wide variety of prices charged by private inspectors, and other states have experienced problems with the quality of the inspections conducted by private inspectors. If the Legislature wishes the department to explore this option further, it should revise s. 616.242, *Florida Statutes*, to authorize the department to contract with private inspectors as agents of the state to conduct inspections of temporary amusement devices at each

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set-up and the semi-annual inspections of permanent amusement devices. The department should then cautiously proceed with soliciting bids to evaluate the feasibility and cost impact of contracting with private inspectors to perform inspections of fair rides. As part of the bid solicitation and contracting process, the department should (1) determine its current unit costs for various types of fair ride inspections; (2) prepare estimates of its supervision costs should these services be contracted out; (3) solicit bids for private vendors willing to provide these services more cost-effectively; (4) develop a monitoring mechanism and performance-based standards in its contracts to ensure that vendors are providing the services in manner that meets state timeliness and quality requirements; and (5) include its contract monitoring costs when evaluating cost proposals to ensure that contracted services will be less costly than current state costs. The department could also use a managed competition approach in which state employees can bid to retain the service in-house.

- To reduce duplicate administration of the Lemon Law, the Legislature should consolidate administration within the Department of Legal Affairs. This would result in a staffing reduction of one position and reduce program costs by \$32,687.
- The department should monitor whether its regulation of small industries continues to provide a public benefit. If these programs fail to demonstrate this benefit, the department should recommend to the Legislature that they be eliminated.

## Agency Response —

The Attorney General and the Commissioner of the Department of Agriculture and Consumer Services provided written responses to our preliminary and tentative findings and recommendations. (See Appendix C, page 21, for their responses.)

Appendix A

# Statutory Requirements for Program Evaluation and Justification Review

Section 11.513(3), *Florida Statutes*, provides that OPPAGA Program Evaluation and Justification Reviews shall address nine issue areas. Our conclusions on these issues as they relate to the Department of Agriculture and Consumer Services' Consumer Protection Program are summarized in Table A-1.

**Table A-1**  
**Summary of the Program Evaluation and Justification Review of the Consumer Protection Program**

Issue	OPPAGA Conclusions
The identifiable cost of the program	The program was appropriated \$30.9 million and 514 FTEs for Fiscal Year 2001-02.
The specific purpose of the program, as well as the specific public benefit derived therefrom	The mission of the Consumer Protection Program is to assist and protect consumers from unlawful, unethical, and unsafe business practices. The program promotes public health and safety and provides an oversight mechanism to protect consumers. The program also helps protect the environment through its regulation of pesticide use.
The consequences of discontinuing the program	If the Consumer Protection Program were abolished, public health and the environment would be endangered by the lack of regulation of pesticides. Florida consumers would no longer have the assurance that the state is regulating the fairness of the weighing devices used by retailers, the gasoline they purchase, the use of pesticides by the agriculture industry and pest control companies, and amusement device safety. Consumers would also lose having a centralized location for obtaining referral to state programs that can assist them with resolving their disputes with state businesses. Although it is likely that some of these duties would be assumed by larger local governments, the regulation provided may not be uniform and would not be provided to all consumers statewide.
Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part, in the existing manner	The public benefits derived from the program's consumer protection services indicate that it is sound public policy to continue funding the program. However, program fees for pesticide applicator and dealer licenses, pesticide registration, motor vehicle repair shop registration, fair ride permits and inspections, and weights and measures inspections could be increased to better cover program regulatory costs and reduce program reliance on general revenue.
Progress towards achieving the outputs and outcomes associated with the program	The Consumer Protection Program met most outcome and output standards for Fiscal Year 2000-01.
An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, <i>F.S.</i> , associated with the program	<p>The program's outcome measures assess the degree of compliance the program found for the various entities it regulates. In Fiscal Year 2000-01, licensed pest control operators and pesticide applicators were found to meet standards for the percentage in compliance with regulations. Compliance by licensed pesticide applicators increased by 16% during the year. Program managers have not identified a clear cause for the increase in compliance, but conjecture that it may be due to the program's education and outreach efforts, increased accessibility to enforcement information on the program's website, and/or increased efforts at compliance by the regulated industry.</p> <p>The program did not meet output standards for the number of registered entities licensed by the Division of Consumer Services, the number of feed, seed, and fertilizer inspections conducted, and the number of complaints investigated/processed by the Division of Agricultural Environmental Services.</p> <ul style="list-style-type: none"> <li>▪ Significantly fewer assistive technology device dealers were registered than estimated for the Division of Consumer Services. The standard assumed 1,500</li> </ul>

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Issue	OPPAGA Conclusions
	<p>dealers would be registered and instead 148 were registered.</p> <ul style="list-style-type: none"> <li>▪ The staff who conduct feed, seed, and fertilizer inspections also conduct pesticide and pest control inspections. The program redirected inspectors to target pesticide and pest control because there were more violations in these areas than expected. Pesticide and pest control inspections take longer to conduct than feed, seed, and fertilizer inspections.</li> </ul>
<p>Whether the information reported pursuant to s. 216.031(5), <i>F.S.</i>, has relevance and utility for the evaluation of the program</p>	<p>Most of the program's legislative performance measures allow for an assessment of the extent to which the program meets its purpose or is successful in carrying out its key functions. However, the program does not have a valid outcome measure for the activities carried out by the Division of Consumer Services. The department's inspector generally has not validated the division's performance measures, and department staff only recently determined that this measure is not valid. The program has been reporting invalid data for the <i>percent of regulated entities found operating in compliance with the consumer protection laws</i>.</p>
<p>Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports</p>	<p>The validity and reliability for the program's performance data have only established for the measures relating to the activities performed by the Division of Standards. The department's inspector general is required to determine the validity of the measure and accuracy of the associated data for each legislative performance measure; however, this determination has not been completed for the remaining program performance measures. The inspector general has recently conducted training for program managers and required them to submit a self-assessment of each measure to identify those measures that lack sufficient controls and require more extensive review. The inspector general plans to complete a review and make a determination for any program measure or data control system that appears to be problematic during Fiscal Year 2001-02.</p>
<p>Alternative courses of action that would result in administering the program more efficiently and effectively</p>	<p>To improve program efficiency and reduce program costs, OPPAGA recommends that the following alternative courses of action be implemented.</p> <ul style="list-style-type: none"> <li>▪ Increase regulatory fees to levels that fully support program costs.</li> <li>▪ Allow program inspectors to work four-day workweeks, which would reduce travel costs.</li> <li>▪ Implement risk-based inspection methods for fair ride and weights and measures inspections.</li> <li>▪ Enact rider misbehavior provisions, which could decrease the incidence of fair ride accidents.</li> <li>▪ Privatize the operation of the consumer services telephone call center and carefully consider privatizing fair ride inspections.</li> <li>▪ Consolidate administration of the Lemon Law within the Department of Legal Affairs.</li> <li>▪ Monitor whether the program's regulation of small industries continues to provide a public benefit and considering eliminating regulation when a public benefit is no longer demonstrated.</li> </ul>

Source: OPPAGA analysis.

Appendix B

# Program Performance for Fiscal Year 2000-01 Output Measures

## The Consumer Protection Program Met Most of its Fiscal Year 2000-01 Output Standards

Division	Measure	1999-00 Actual Performance	2000-01 Actual Performance	2000-01 Performance Standard	Reason for Not Meeting Standard
<b>Standards</b>	Number of LP Gas facility inspections conducted	5,197	4,781	4,300	Met standard
	Number of petroleum field inspections conducted	211,962	235,336	180,000	Met standard
	Number of petroleum lab test analyses performed	379,746	373,975	172,000	Met standard
	Number of amusement ride safety inspections conducted	9,990	10,923	9,205	Met standard
	Number of weights and measures inspections conducted	71,246	71,689	60,000	Met standard
<b>Consumer Services</b>	Number of assists provided to consumers, not including Lemon Law	790,573	936,036	780,600	Met standard
	Number of Lemon Law assists made to consumers	29,429	28,394	21,000	Met standard
	Number of complaints investigated/processed by the Division of Consumer Services in the Consumer Protection Program	21,750	20,620	11,639	Met standard
	Number of "no-sales solicitation calls" subscriptions processed	121,375	139,633	103,000	Met standard
	Number of registered entities licensed by the division				Significantly fewer assistive technology device dealers were registered than estimated. The standard assumed 1,500 dealers would be registered and instead 148 were registered. The 2001 Legislature moved responsibility for assistive technology devices to the Agency for Health Care Administration.
		32,075	33,563	35,607	

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Division	Measure	1999-00 Actual Performance	2000-01 Actual Performance	2000-01 Performance Standard	Reason for Not Meeting Standard
Agricultural Environmental Services	Number of feed, seed, and fertilizer inspections conducted	14,360	11,176	12,500	The staff who conduct these inspections also conduct pesticide and pest control inspections. The program redirected inspectors to target pesticide and pest control because there were more violations in these areas than expected. Pesticide and pest control inspections take longer to conduct than feed, seed, and fertilizer inspections.
	Number of pest control inspections conducted	2,181	2,228	1,818	Met standard
	Number of pesticide inspections conducted	3,582	3,453	2,500	Met standard
	Number of complaints investigated/processed by the Division of Agricultural Environmental Services in the Consumer Protection Program (excluding pesticide-related complaints)	770	738	875	The program responded to the complaints received. Department staff were unable to explain why the standard was estimated at 875. This is no longer a program measure in Fiscal Year 2001-02.
	Number of pesticide complaints investigated	345	438	350	Met standard
	Number of laboratory analyses performed on seed and fertilizer and pesticide product and residue samples	211,744	255,972	217,591	Met standard
	Number of people served by mosquito control activities	13,544,909	13,561,534	14,000,000	Substantially met standard

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

*Appendix C*

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## Response from the Attorney General and the Department of Agriculture and Consumer Services

In accordance with the provisions of s. 11.45(7)(d), *Florida Statutes*, a draft of our report was submitted to the Attorney General and the Commissioner of the Department of Agriculture and Consumer Services to review and respond.

Their written responses are reprinted herein beginning on page 22.



**OFFICE OF THE ATTORNEY GENERAL**

**THE CAPITOL**

**TALLAHASSEE, FLORIDA 32399-1050**

**ROBERT A. BUTTERWORTH**  
*Attorney General*  
*State of Florida*

October 22, 2001

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

Dear Mr. Turcotte:

Thank you for your draft justification review report which -- is entitled, *General Revenue Savings Possible in Consumer Protection Program* and -- was submitted to this office on October 10, 2001. As always, the Office of the Attorney General appreciates the time and effort provided by the staff of the Office of Program Policy Analysis and Government Accountability.

Sincerely,

/s/

Richard Doran  
Deputy Attorney General



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

Please Respond to:

October 25, 2001

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

Dear Mr. Turcotte:

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

For those recommendations directed to the Legislature, we will work with the appropriate Legislative committees to ensure each recommendation is carefully analyzed. For those recommendations directed to the Department, we offer the following:

Recommendation

To potentially reduce program travel costs for inspections by an estimated \$74,422 annually, the Department should run a pilot test to evaluate the feasibility of having LP Gas, pesticide, petroleum, fair ride, and weights and measures inspectors work a four-day workweek. If results are favorable, the Department should implement this alternative statewide by July 1, 2002.

Response

Subject to Department of Management Services approval, the Department will implement a pilot project in the Bureau of LP Gas to determine the impact of a change to the proposed four-day workweek. Costs savings in travel and overtime and the impact on productivity will be evaluated.

Recommendation

To make more efficient use of weights and measures resources, the department should implement a risk-based inspection system combined with random sampling.

Response

The Bureau of Weights and Measures is currently addressing risk-based inspections as a means to more effectively utilize resources. A risk-based system of inspection, based on violation histories, is currently under development for the vehicle scale testing program. Industries that



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October 25, 2001  
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have the most accuracy related violations have been identified and will be targeted for inspection at increased frequencies. The new WinWam field inspection database software and portable computers have been purchased, and will be implemented in November 2001. Coupled with changes in policies regarding the recording of device accuracy data, the new database will provide information needed to implement risk-based testing for all sizes of devices in the future. The new database provides flexibility needed for recording additional device data and for customizing queries to retrieve better information for use in effectively and efficiently managing inspection resources.

### Recommendation

To reduce program costs for operating the consumer services telephone call center, the Department should contract out for call center services.

### Response

The Department is currently analyzing the feasibility of privatizing these operations, although the call center provides more functions than simply being a caller referral center. Staff provides information on the complaint history of businesses; advises callers with respect to the Division of Consumer Services' regulatory programs (such as sellers of travel and charitable solicitations); explains various consumer protection laws and how to file complaints; and warns callers about consumer frauds and scams. The complexity in discussing so many various topics and issues may make it difficult to privatize the call center's operations. In addition, the Department is designated by Florida Statutes to be the state's clearinghouse for consumer complaints. Because of the centralization of information and the ability to track and interface with other aspects of the Division's regulatory and complaint process, callers have the ability to access such information by contacting the Division's call center; therefore, it is unknown whether privatization would be beneficial to callers. Furthermore, the privatized call center operations listed in the Justification Review report are not comparable to the Division's call center activities.

Finally, it should be noted that call center personnel often provide data input and assistance to the Division's other programs, when necessary.

### Recommendation

Inspectors are available in the private market to conduct fair ride inspections, as proposed in the Department's long-range program plan. However, the Legislature and the Department should carefully consider whether to privatize this function.

### Response

The Justification Review correctly points out that there is no way of knowing if inspection costs could be lowered by contracting with private inspectors, and that the quality of ride inspections may suffer with privatization. The impact of privatizing this function is stated in the referenced Long Range Program Plan (Version 11- Reduction Version). "Increases in the number of accidents will occur with a corresponding increase in public safety risks. Quality control over the condition of amusement rides operating in the state will be diminished and response time for accident investigations and enforcement actions will increase because personnel can respond only from Tallahassee." The use of any "agent" who has an economic interest in the process,

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rather than one who does not have a stake in the outcome, may be cost prohibitive and may be counter productive to public safety.

Professional, engineers and qualified inspectors now conduct annual third party inspections on amusement rides in the state. A third party inspection is a valuable adjunct to Department and owner's inspections, as long as they are done in conjunction with Department inspections. Even with inspections by a third party and daily inspections by the owner of the ride, the Bureau of Fair Rides Inspection found during the last fiscal year that 56% of the rides inspected had a deficiency which required correction before the ride could operate for public use. Privatization will reduce the overall number of safety inspections performed on amusement rides and will turn these safety inspections over to private entities whose motivation is primarily economic instead of an agency whose mission is public safety.

Recommendation

The Department should monitor whether its regulation of small industries continues to provide a public benefit.

Response

The Department will review the small industry regulatory services it provides to assure its activities are needed to protect the general public. In many instances, small industries require greater attention and help because of their limited capacity to stay current with health, safety and environmental standards designed to protect workers and consumers. The support of small industries through uniform regulation also aids in the diversification and broadening of the state's economic development.

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

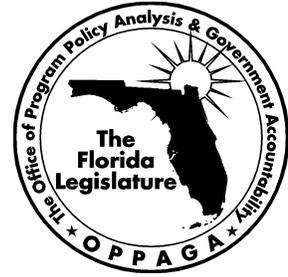
Sincerely,

/s/  
Charles H. Bronson  
Commissioner of Agriculture

CHB/ac

## The Florida Legislature

# *Office of Program Policy Analysis and Government Accountability*



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

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- [Performance-based program budgeting \(PB<sup>2</sup>\) reports and information](#) offer a variety of tools. Program evaluation and justification reviews assess state programs operating under performance-based program budgeting. Also offered are performance measures information and our assessments of measures.
- [Florida Government Accountability Report \(FGAR\)](#) is an Internet encyclopedia of Florida state government. FGAR offers concise information about state programs, policy issues, and performance. Check out the ratings of the accountability systems of 13 state programs.
- [Best Financial Management Practices Reviews of Florida school districts](#). In accordance with the *Sharpening the Pencil Act*, OPPAGA and the Auditor General jointly conduct reviews to determine if a school district is using best financial management practices to help school districts meet the challenge of educating their students in a cost-efficient manner.

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Project supervised by Debbie Gilreath (850/487-9278)

Project conducted by Becky Vickers (850/487-1316), Rashada Houston (850/487-4971), and Linda Vaughn

John W. Turcotte, OPPAGA Director