



Arizona Department of Agriculture

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September 24, 2020

Lindsey Perry
Auditor General
2910 North 44th Street, Suite 410
Phoenix, AZ 85018

Dear Ms. Perry:

I have reviewed the revised preliminary report draft of the performance audit of the Arizona Department of Agriculture's (AZDA) key regulatory responsibilities. Enclosed is the Department's written response to the report.

It is important to note that the AZDA due to cuts in funding has seen a significant reduction in staffing levels over the past number of years. In particular, the three Divisions that you chose to look at as part of our Regulatory Audit have seen vast reductions in employees.

Our Environmental Services Division has seen its inspectors reduced from 13 to 6 since 2008. Likewise our Weights and Measures Services Division has seen its inspection staff reduced from 27 to 16 since 1992, and finally our Pest Management Division has seen its inspection staffing levels reduced from 17 to 9 since 1997.

As you can see, these are not minor staffing reductions and the result of such reductions will lead to a number of inspection challenges including:

- More mileage usage as an Inspector who may have an inspection in Page would have driven from Flagstaff or even closer, but now drives twice to three times as far to complete an inspection.
- Less Inspections due to much lower staffing levels.
- Administrative functions that were once staffed by administrative positions are now done by Inspectors.

Respectfully,

Mark W. Killian
Director

Finding 1: Divisions' inspection approaches resulted in some higher-risk establishments not being inspected and inefficiently used inspection resources

Recommendation 1: The Department should require the ESD, PMD, and WMSD to develop and implement risk-based, data-driven, and internally coordinated inspection approaches to help ensure higher-risk licensees and establishments are inspected and to help minimize duplicated effort and travel.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: An internally coordinated inspection approach is the best approach. The Department's inspections are conducted by six divisions; therefore, the inspections are extremely diverse. It is essential that the division directors have the flexibility to respond to inspection requests in an appropriate manner for their division. Many of the Department's required inspections are time sensitive. If a complaint occurs in Bisbee relating to a nearby pesticide application or feed they believed caused their pet to die, ESD needs to go to Bisbee in a timely manner to address the complaint and gather any forensic evidence that will go away with time. In addition, working with the federal government ESD does not have the opportunity to always pick locations for inspections. Ultimately in these situations ESD cannot travel when it is convenient, as time is of the essence. Based on discussions PMD staff has had with the Auditor General, as of April 1, 2020, PMD leadership has eliminated physically visiting child care facilities and now conducts those inspections via telephone and email. This decision is, in part, based on the fact that, unlike schools, childcare facilities do not employ pest control applicators. And, any information PMD staff needs from a childcare facility could easily be obtained via telephone, email and facsimile. While the PMD had excluded municipalities from its inspection goals for the past 17 years, PMD leadership agrees with the Auditor General that employees of municipalities should be inspected, since, like pest control companies, they employ individuals that hold pest control applicator certifications. Therefore, they have now been added to the PMD's inspection goals.

Recommendation 2: The Department should require the ESD, PMD, and WMSD to identify and document the risk factors they will use to inform their risk-based inspection approaches and establish a process to periodically reassess these risk factors based on new information or changing circumstances.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has some additional comments. The performance audit report put a lot of focus on pesticides. From a pesticide point of view most of the market place inspections are not high priority. ESD marketplace inspections involve all Non-Food Quality (NFQ) products – feed, fertilizer, seed and pesticide. This NFQ program pre-dates the EPA and is a consumer protection program. ESD samples products and inspect locations that sell these materials. ESD helps to ensure all companies are licensed, products are appropriately labeled and all products are registered as required. The Auditor General's report stated that many of our inspections are not EPA high priority. Again this is true because stores such as convenience stores, stores that buy discontinued products or damaged goods, are stores where violations are found often

due to low product turnover. The statutory purpose is to help ensure consumers are not defrauded. The Department wants to ensure a pet owner's pet does not get sick due to moldy feed. A dog food package with use directions only in Chinese was found at one of these "low risk" stores – an outlet store. Feed, seed, pesticide and fertilizer products are all important and normally a high priority pesticide facility will not sell other NFQ items. Therefore, it is prudent to go to facilities that although not a high priority for pesticides is a high priority for some of the other NFQ products.

Recommendation 3: The Department should require the ESD, PMD, and WMSD to collect, maintain, and review sufficient data regarding licensees, devices, and establishments subject to inspection and the results of prior inspections to help plan and execute risk-based, data-driven, and internally coordinated inspection approaches.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has some additional comments. The Auditor General's performance audit recognizes that the Department's inspections span 61 vastly different inspection types. There are thousands of retail locations that sell one or all of the commodities, feed, fertilizer, seed or pesticides including: grocery stores, hardware stores, pet stores, pest control supply stores, dollar stores, RV stores, hydroponic stores, nurseries, and big box retail outlets. There is a different science required to conduct the many types of inspections. In the late 1990s the state statistician was brought in by ESD to try and set up a statistically valid sampling/inspection scheme. This was when ESD was taking over a 1,000 samples a year with 13 inspectors. The effort ultimately came to an end as there was no simple way of gathering the information on what is out there as far as products and locations to try to determine and weight factors. To show the complexity here are examples. The weight given to population served, cannot be weighted too heavily as this would leave out rural customers. Counter to this, product turnover needs to be considered, some rural locations serving smaller populations, the consumers may be at greater risk due to low turnover. The amount reported of products sold cannot be weighed too heavily or most inspections would be focused on the ag side where products are sold in tons versus pounds. The point is, each of these factors points us in a different direction. The Department receives minimal complaints. The Department does look at prior violations in determining inspection priorities and responds to each complaint. We will refine our inspection scheme based on the information available to us.

Recommendation 4: The Department should require the ESD, PMD, and WMSD to establish inspection goals and performance metrics for division inspectors, such as the number of inspections that inspectors should complete on a daily or weekly basis and time spent traveling versus performing inspections.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will expand the inspection goals and performance metrics currently used by these divisions to fully implement this recommendation.

Recommendation 5: The Department should develop and implement policies and procedures for regularly assessing and monitoring inspector performance against the established goals and performance metrics and reporting information about the divisions' inspection activities, goals, and performance metrics to Department management.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will expand its policies to fully implement this recommendation.

Recommendation 6: The Department should centrally monitor division inspection activity and results and hold its divisions accountable against established expectations, inspection goals, and performance metrics.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will expand monitoring to fully implement this recommendation.

Finding 2: Department did not inspect the majority of licensed airport scales and any licensed medical marijuana dispensary scales to ensure their accuracy

Recommendation 7: The Department should inspect all airport scales by the end of fiscal year 2021 in line with its established goal.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Weights and Measures Services Division recently has inspected all of the airport scales at Terminals 2, 3, and 4 of Phoenix Sky Harbor International Airport, and has a plan in place to inspect all of the remaining airport scales within Arizona by the end of fiscal year 2021. The Weights and Measures Services Division will continue to seek innovative ways to complete this and other inspection projects while managing the ongoing limitations of staff resources.

Recommendation 8: The Department should implement its planned airport scale inspection program, including defining how frequently Department-licensed scales should be inspected based on assigned risk, in conjunction with its efforts to improve its inspection approach as recommended in Recommendations 1-6 in Finding 1.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Weights and Measures Services Division has placed airport scales on the same three-year inspection schedule as other small capacity scales (including grocery scales). The Weights and Measures Services Division will continue to seek innovative ways to complete this and other inspection projects while managing the ongoing limitations of staff resources.

Recommendation 9: The Department should work with its Assistant Attorney General to ensure it inspects licensed scales and packaged products sold by weight at medical marijuana dispensaries, as required by State law by working with licensed scale owners and other stakeholders, as appropriate, to determine a process for inspecting these scales.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will work with licensed scale owners and other stakeholders to identify a way for these scales to be inspected.

Recommendation 10: The Department should work with its Assistant Attorney General to develop and implement an inspection program for scales and products sold by weight at medical marijuana dispensaries, including defining how frequently Department-licensed scales should be inspected based on assigned risk, in conjunction with its efforts to improve its inspection approach as recommended in Recommendations 1-6 in Finding 1.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will work with licensed scale owners and other stakeholders to identify a way for these scales to be inspected.

Finding 3: Department issued 281 qualified applicator licenses without obtaining required criminal history background checks and lacks authority to require background checks for certified applicators

Recommendation 11: The Department should continue to obtain criminal history background checks for all applicants for an initial qualified applicator license.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: This was implemented within three weeks of the auditors notifying the Department of the need to do this.

Recommendation 12: The Department should work with its Assistant Attorney General to determine what action the Department should take regarding the qualified applicator licenses it has issued since August 2017 without obtaining required fingerprint-based criminal history background checks and then take action accordingly.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department consulted with the Assistant Attorney General immediately to determine the proper course of action.

Recommendation 13: The Department should develop and implement a process for obtaining and reviewing the results of criminal history background checks for only those license applicants the Department has statutory authority to obtain this information.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has implemented this, ensuring an application for licensure has been received with the background check paperwork before the background check is submitted to the Department of Public Safety.

Recommendation 14: The Legislature should consider revising statute to reinstate the Department's statutory change to obtain criminal history background checks of certified applicator license applicants, similar to qualified applicator license applicants.

Choose an item. Response: The finding of the Auditor General is Choose an item.

Response explanation: A Department response is not required since the recommendation is to the Legislature.

Recommendation 15: If it does not receive statutory authority to obtain criminal history background checks for certified applicator license applicants, the Department should revise its rules to require certified applicator license applicants to self-disclose and attest to whether they have been convicted of a misdemeanor or felony.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will add a self-disclosure question to the licensing application.

Finding 4: Department licensed 66 percent of applicants we reviewed although they did not meet all licensure requirements

Recommendation 16: The Department should issue licenses to only those applicants who meet all licensure requirements.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: More than reflecting that the Department issued licenses to unqualified applicants, the Auditor General's sampling reflects the difficulty of providing documentation as a result of old and cumbersome systems. The Department will make sure that all of the deficiencies noted are corrected.

Recommendation 17: The Department should work with its Assistant Attorney General to determine what, if any, actions the Department should take regarding the licenses it has issued to applicants who did not meet all requirements and then take these actions accordingly.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will consult with the Assistant Attorney General as needed to address this issue.

Recommendation 18: The Department should develop and implement licensing policies, procedures, guidance, and/or checklists that specify the documentation applicants must submit and the Department should review and retain to help ensure license applications are complete and that applicants pay all required licensing fees, and train staff on these policies and procedures.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: More than reflecting that the Department issued licenses to unqualified applicants, the Auditor General's sampling reflects the difficulty of providing documentation as a result of old and cumbersome systems. The Department will make sure that all of the deficiencies noted are corrected.

Recommendation 19: The Department should develop and implement a risk-based supervisory review process using risk factors, such as whether new staff are processing license applications or there are statute or rule changes to licensing requirements, to help ensure that Department staff issue licenses only to applicants that meet all requirements.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will develop and implement a risk-based supervisory review process.

Finding 5: Department failed to retain public records, limiting transparency of official activities

Recommendation 20: The Department should comply with the State's public records laws and maintain documentation from initial industrial hemp applicants for all statutory licensure requirements to support its licensure decisions and allow it to fulfill public records requests.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: This already has been implemented.

Recommendation 21: The Department should implement its revised industrial hemp program licensing and filing procedures.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: This already has been implemented.

Recommendation 22: The Department should maintain records that are reasonably necessary to provide an accurate accounting of its licensing and inspection activities to license only qualified applicants and inspect regulated entities consistent with its records retention schedule and for the required time period.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department will appropriately maintain records as required by Statute and the records retention schedule.

Recommendation 23: The Department should clearly communicate and provide training on records retention requirements and expectations to Department staff responsible for maintaining, filing, and retaining licensing and inspection records.

Department Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department has trained its employees.