



State of Arizona  
Office  
of the  
Auditor General

**PERFORMANCE AUDIT**

**ARIZONA  
DEPARTMENT  
OF  
AGRICULTURE**

**SUNSET FACTORS**

**Report to the Arizona Legislature  
By Debra K. Davenport  
Auditor General**

**September 2000  
Report No. 00-17**

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DEBRA K. DAVENPORT, CPA  
AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

September 28, 2000

Members of the Legislature

The Honorable Jane Dee Hull, Governor

Mr. Sheldon Jones, Director  
Arizona Department of Agriculture

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Department of Agriculture—Agencywide Sunset Factors. The analysis of the 12 Sunset factors was prepared as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 et seq.

This is the eighth in a series of reports to be issued on the Arizona Department of Agriculture.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on September 29, 2000.

Sincerely,

Debbie Davenport  
Auditor General

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**ARIZONA  
DEPARTMENT  
OF  
AGRICULTURE  
  
SUNSET FACTORS**

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# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has prepared agency-wide Sunset factors for the Arizona Department of Agriculture (Department). The analysis of the 12 Sunset factors was prepared as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 et seq.

In order to prepare this analysis of the 12 Sunset factors and pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee, the Office conducted a series of seven performance audits of the Arizona Department of Agriculture. These audits covered 7 of the Department's 10 programs, representing over 85 percent of the Department's \$17.7 million fiscal year 2000 expenditures, and nearly 90 percent of the Department's 391 FTEs.<sup>1</sup> Three programs were not selected as they had either been recently reviewed through the Program Authorization Review (PAR) process, or received a relatively small legislative appropriation.

## Department Organization

The Department is divided into ten programs as described below. Those programs marked with a ✓ were included in this series of audits:

- **Administrative Services (32.0 FTE)**—Composed of both the Office of the Director and Administrative Services, this program supports the Department by supplying legislative services, rules, legal services, strategic planning, and public information. In addition, it provides each agency program with accounting, payroll, budgeting, human resources,

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<sup>1</sup> These figures do not include the approximately \$2.4 million expended by various private agriculture industry councils, commissions, and boards whose activities are included in the Commodity Development Program's expenditures.

training, information technology, procurement, and facilities management services.

- **Agriculture Consultation and Training (3.0 FTE)**—This program provides advice to the agricultural community on how to comply with state statutes, regulations, policies, and federal mandates. Staff conduct on-site visits to evaluate compliance with these mandates and produce reports outlining recommendations to increase compliance with specific issues of regulatory concern. In addition, the program is responsible for providing advice and consultation to the racing industry to ensure compliance.
  
- ✓ **Animal Disease, Ownership and Welfare Protection (55.8 FTE)**—To protect agricultural animals from disease or abuse and livestock owners against theft, this program regulates all facets of livestock ownership and movement, and maintains documentation of livestock activity. Staff inspect animals upon sale, register brands, issue equine ownership and hauling certificates, resolve animal ownership disputes, and investigate complaints of livestock theft or alleged abuse. The program also protects the health, quality, and marketability of Arizona animals by identifying, diagnosing, and preventing existing and emerging diseases.
  
- ✓ **Commodity Development and Promotion (5 FTE)**—This program promotes marketing activities that stimulate domestic and export agricultural sales of Arizona farm and food products; educates domestic and international wholesalers, retailers, and consumers on the advantages of choosing Arizona-grown foods; and encourages agricultural development. In addition, it provides administrative support services to agricultural industry research and promotion groups.
  
- ✓ **Food Safety and Quality Assurance Program (136.5 FTE)**—This program ensures that the public food supply meets established standards for quality and safety by providing inspections for the safety and/or quality of meat, poultry, ratites (ostriches, rheas, or emus), milk, eggs, and fresh produce. For example, to protect the public health and safety, the Department inspects meat, dairy, and egg proc-



essing plants and collects and tests samples of meat and dairy products for microbiological, chemical, and physical food hazards. Further, the program conducts inspections to ensure that citrus, fruits, vegetables, or pecans marketed within or exported from Arizona conform to state quality standards and that certain fresh produce products imported from Mexico meet the United States Department of Agriculture's (USDA) quality requirements.

- **Native Plant and Cultural Resources Protection (9.0 FTE)**—Charged with protecting and conserving Arizona's native plants, this program regulates the harvesting, transporting, and sale of more than 350 native plant species through the issuance of permits. In addition, it enforces the Arizona Native Plant Law and investigates and prosecutes natural resource theft and destruction.
  
- ✓ **Non-Food Product Quality Assurance Program (10.5 FTE)**—This program protects the public's interest by ensuring the quality of Arizona's feed, fertilizer, pesticide, forage, and seed. To regulate the content and distribution of products that could potentially affect public health, this program registers pesticides and fertilizers used in Arizona; and issues licenses to feed, fertilizer, forage, and seed dealers and labelers. Additionally, inspectors collect feed, fertilizer, pesticide, and seed samples to ensure compliance with labeling and quality requirements. Inspectors also respond to individual consumer complaints regarding product quality concerns.
  
- ✓ **Pest Exclusion and Management Program (99.2 FTE)**—This program prevents, controls, and eradicates infestations of harmful pests, plant diseases, and noxious weeds, thereby also reducing the necessity of pesticide applications. The program inspects trucks entering Arizona at six Department of Transportation Ports-of-Entry and at trucking destinations throughout Arizona to ensure these vehicles

are not carrying harmful pests, plant diseases, or noxious weeds.<sup>1</sup> Additionally, the program inspects nurseries, ensures that cotton growers comply with statutory plow-down requirements, and oversees eradication efforts when harmful plant infestations are found.

- ✓ **Pesticide Compliance and Worker Safety (10.5 FTE)**— This program works to protect public health, agricultural workers, and the environment by ensuring the proper use of crop protection products. To accomplish this, the program conducts inspections that address the handling, mixing, loading, storage, disposal, and application of agricultural pesticides. Further, program inspectors confirm that agricultural workers have been properly trained and provided with adequate decontamination and protective equipment as required by the federal worker protection standards. The program also provides training and testing for private and commercial pesticide applicators to ensure competency for certification.
  
- ✓ **State Agricultural Laboratory (29.5 FTE)**— This program provides agricultural and environmental laboratory analysis, identification, certification, and training services to the Department and others. Laboratory activities include identifying potential insect or plant hazards transported into Arizona, analyzing pesticide and other chemical samples to verify chemical composition, analyzing feed and fertilizer samples to ensure that their labeling properly describes the product's contents, and testing food and milk samples for food-borne pathogens.

### **Agriculture Advisory and Research Councils**

In addition to its programs, the Department also works with a number of statutorily established councils and commissions. As

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<sup>1</sup> The Department began inspecting trucks at the Douglas and Duncan ports on July 17, 2000. The Department signed an agreement with the State of California whereby Arizona inspectors will staff these two ports, while California provides monies to operate them.

illustrated in Item 1, statutes create several advisory councils that offer industry input into agency operations. Specifically, the Department of Agriculture Advisory Council, composed of industry representatives, assists the Director in formulating and reviewing administrative rules and reviewing the Department's budget. Additionally, the Director is required to appoint an advisory council for the Department's Animal Services Division that

**Item 1: List of Statutorily Mandated  
Advisory and Research Councils  
As of August 2000**

- Department of Agriculture Advisory Council (A.R.S. §3-104)
- Animal Services Division Advisory Council (A.R.S. §3-105)
- Citrus, Fruit and Vegetable Advisory Council (A.R.S. §3-527.01)

**Commodity Research Councils**

- Arizona Iceberg Lettuce Research Council (A.R.S. §3-526.01)
- Arizona Citrus Research Council (A.R.S. §3-468.01)
- Arizona Wine Commission (A.R.S. §3-552)
- Arizona Grain Research and Promotion Council (A.R.S. §3-582)
- Arizona Beef Council (A.R.S. §3-1232)
- Cotton Research and Protection Council (A.R.S. §3-1082)

Source: Auditor General staff compilation from relevant Arizona Revised Statutes.

assists and makes recommendations to the Department for implementing various functions within that Division such as meat, poultry, egg, and livestock inspection and regulation. The Director also has the discretion to create similar councils for other Department units. Finally, the Citrus, Fruit and Vegetable Advisory Council provides guidance and oversight regarding the Department's efforts to enforce minimum quality standards for all citrus, fruit, vegetables, pecans, and dates produced or sold in the State.

As shown in Item 1, statutes also create several commodity research councils that conduct or participate in research to improve their commodities. These councils do not receive General Fund appropriations, but fund their activities through industry

assessments or donations. While the Department does not participate as a member in these councils, it does provide administrative, accounting, or revenue collection support, which these councils pay for.

### **Scope and Methodology**

The Department's performance was analyzed in accordance with the 12 statutory Sunset factors. Previous audit work in the following programs was included:

- Animal Disease, Ownership and Welfare Protection (Auditor General Report No. 00-8);
- Commodity Development and Promotion (Auditor General Report No. 00-15);
- The Department's Licensing function (Auditor General Report No. 00-5);
- Food and Non-Food Quality Assurance (Auditor General Report No. 00-10);
- Pest Exclusion and Management (Auditor General Report No. 00-13);
- Pesticide Compliance and Worker Safety (Auditor General Report No. 00-16); and
- State Agricultural Laboratory (Auditor General Report No. 00-14).

Information obtained from Department officials, the Governor's Regulatory Review Council, the Department of Administration, and the Office of the Attorney General is also included.

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## SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2954, the Legislature should consider the following 12 factors in determining whether the Arizona Department of Agriculture should be continued or terminated. The evidence assembled under these 12 factors indicates the need for the functions performed by the Department. However, the audits of 7 of the Department's 10 programs identified opportunities to improve the Department operations in a variety of ways. The following sections discuss each Sunset factor along with the audit findings relevant to the factor.

**1. The objective and purpose in establishing the Department.**

In 1989, the Legislature passed Laws 1989, Chapter 162, establishing the Department of Agriculture to provide for a uniform and coordinated agricultural program and policy in the State. Prior to its formation, most of the Department's current duties were carried out by four smaller state agencies: the Arizona Commission of Agriculture and Horticulture, the Arizona Livestock Board, the State Egg Inspection Board, and the State Dairy Commissioner.

The Department began operating as a state agency on January 1, 1991, and has defined its mission as:

*“To regulate and support Arizona agriculture in a manner that encourages farming, ranching, and agribusiness while protecting consumers and natural resources.”*

In support of this mission, the ten programs within the Department perform six central functions:

- **Inspection**—The Department inspects livestock for ownership, and meat, poultry, and fresh produce for

food safety and quality. In addition, the Department inspects non-food products such as feeds, fertilizers, pesticides, forage, and seed to ensure the quality of the product and the accuracy of its labeling. The Department also inspects trucks entering the State that meet certain criteria, such as those bearing agricultural loads or originating from certain points, and conducts surveys and inspections at nurseries and other locations for the presence of pests. Finally, the Department conducts inspections to review how agricultural workers are trained in pesticide use, and how they handle, mix, and apply pesticides.

- **Licensing**—The Department issues over 70 different agricultural-related licenses and registrations, including licenses for fruit and vegetable dealers, milk distribution plants, meat-processing plants, pesticide users and applicators, and livestock brands.
- **Testing**—The Agricultural Laboratory provides a variety of testing services to both the Department and other agencies, including animal disease testing, feed and fertilizer formulation analysis, insect identification, and pesticide residue analysis.
- **Investigation**—The Department investigates complaints from the public, as well as on its own initiative, in a variety of areas. These include animal cruelty complaints, complaints of stolen or lost cattle, and complaints of inaccurate labeling on feed, fertilizer, or meat product packaging labels. In addition, the Department can initiate investigations concerning possible violations of pesticide use requirements, violations of the Native Plant Law, and animal disease outbreaks.
- **Training** —The Department provides training to the agricultural community. Through this function, the agricultural community may seek advice and training from the Department on complying with the statutes, regulations, policies, and federal mandates for which they are held accountable. Further, the

Department provides training and testing services to private and commercial pesticide applicators to ensure competency for pesticide certification.

- **Promotion** —The Department promotes Arizona agricultural products domestically and abroad by familiarizing and educating wholesalers, retailers, and consumers about the quality and diversity of Arizona’s agricultural products. The Department also strives to increase the consumption of these products.

**2. The effectiveness with which the Department has met its objective and purpose, and the efficiency with which it has operated.**

The Department has met its overall objective and purpose. However, in a series of seven reports, the Auditor General has identified ways the Department of Agriculture could improve its efficiency and effectiveness. Specifically, the Department could:

- **Centralize Licensing Functions**—The Department of Agriculture could improve its efficiency by centralizing the various licensing functions within the Department. Currently, the Department employs 12 separate licensing functions to issue over 70 types of licenses. With this fragmented approach, the Department operates with a number of inefficiencies and weaknesses, including duplication of personnel and other resources, increased financial risk due to inappropriate cash-handling controls, and poor customer service. Therefore, the Department should centralize its fragmented licensing functions and pursue implementing a single licensing database to store and track all licensing data (Report No. 00-5).
- **Improve Agricultural Promotions**—The Department’s role in promoting Arizona agricultural products through a \$50,000 Arizona Grown appropriation could be improved by promoting specialty and processed products produced in the State and target-

ing consumers most likely to buy local products. To measure the impact of its promotions, the Department should develop processes to measure project effectiveness. Further, the Department should increase its available funding for Arizona Grown by taking advantage of additional funding that industry may be willing to contribute (Report No. 00-15).

- **Enhance Pesticide Application Monitoring and Compliance**—The Department could enhance the effectiveness of its pesticide application monitoring and regulatory enforcement efforts by requiring pesticide law violators to notify the Department in advance of making pesticide applications. Although it is part of its pesticide regulatory efforts, during fiscal year 1999, the Department reports that it monitored only 77 of the over 26,800 agricultural pesticide applications it had on record. While increased monitoring of all pesticide applications is not necessarily warranted, requiring pesticide law violators to pre-notify the Department of pesticide applications would enable the Department to focus monitoring efforts on violators of state pesticide laws (Report No. 00-16).
  
- **Improve Border Inspections and Charge Fees for Some Services**—The Department should create additional inspector positions and add these inspectors to uncovered, high-traffic ports such as Topock and/or Kingman to increase the number of trucks it inspects for harmful pests and plant diseases. The Department should consider creating these positions by reallocating some of the staff positions reduced as a result of the Department centralizing its licensing functions. The Department should also work with the Department of Transportation to enhance its port inspection activities.

Additionally, the Department does not recover all of its costs for issuing some interstate and federal phyto-sanitary certificates. These certificates confirm agricultural products are free from specified pests, diseases, and/or weeds, and are required by some



states and other countries in order to import Arizona products. However, in some cases the Department lacks statutory authority to charge a fee for issuing these certificates. In cases where it has the ability to charge fees, those fees are not always sufficient to recover its costs. Therefore, the Department should continue with its efforts to identify its total costs for issuing phyto-sanitary certificates, seek legislative authority to charge for these certificates, and establish appropriate fees (Report No. 00-13).

- **Improve Livestock Inspection Process**—The Department and the Legislature can make a number of changes to improve cattle and horse inspections, including raising fees to recover more of the Department's inspector travel costs and eliminating duplicate inspections for as many as 180,000 cattle. The Legislature should authorize the Department to adopt a travel fee and raise the current horse inspection fee. The Department should reduce the costs of inspections by conducting regular, centralized inspections, promoting inspections at convenient locations, and increasing the number of part-time inspectors. Finally, the Legislature should consider eliminating the need for the Department to conduct pre-transit inspections at auctions and feedlots, a step that could eliminate the need for the Department to inspect as many as 180,000 head of cattle annually (Report No. 00-08).

Further, several inefficiencies within the Department's information technology system were identified. The performance audits completed on programs within the Department identified a number of deficiencies, including:

- **Redundant Licensing Databases**—The Department uses over 30 databases to issue licenses. Many of its licensees appear in more than one database, creating an unnecessary duplication that could be eliminated by developing and implementing a single licensing database.

- **Outdated Databases**—Some databases are old, lack code documentation, and need to be replaced. For example, several of the databases used in the live-stock inspection subprogram are outmoded, and one is so poorly designed that when data entry staff make an error, the program stops running. If staff continue typing, data is entered directly into the programming code. Additionally, according to the Department's information technology staff, many of the current databases lack proper documentation describing their contents. As a result, it is occasionally difficult to properly interpret data in order to draw conclusions.
  
- **Lack of Automation**—Operations could be automated to improve efficiency. For example, the Department manually records and stores documents issued to horse owners to prove ownership. Not only is the process unwieldy, but there are no provisions for removing records of horses that no longer exist.

The Department is aware of these problems and is taking steps to upgrade its information technology systems. For example, the Department worked with the Government Information Technology Agency (GITA) to obtain over \$200,000 during fiscal years 2000-2001 for computer upgrades, including upgrading its personal computers and making its information systems year 2000 compliant. However, the Department still lacks sufficient funds to address all of its technology needs, and should continue working with GITA and the Legislature to obtain necessary funding to upgrade its computer equipment and information systems.

**3. The extent to which the agency has operated within the public interest.**

The Department of Agriculture has generally operated in the public interest by regulating and supporting Arizona agriculture. Specifically, the Department regulates the following areas:

- **Food Safety**—Department inspectors fulfill an important public health role by ensuring that Arizona has safe, wholesome meat, poultry, and dairy products that are properly labeled. During fiscal 1999, the Department reports that it conducted over 17,000 meat inspections, condemning over 120,000 pounds of meat, and issuing seven letters of warning and four criminal citations. Additionally, the Department reports that it conducted 845 on-site inspections of dairies and milk processing plants, removing 353,853 pounds of milk from sale.
  
- **Worker Safety**—To regulate the safety and health of workers who work with and around pesticides, the Department reports conducting 97 worker safety inspections during fiscal year 2000 and identifying and addressing nearly 3,700 worker safety issues.
  
- **Pest and Disease Protection**—The Department inspects trucks at six ports as well as interior locations to identify and eradicate dangerous plant and animal pests and diseases, and noxious weeds. The Department also performs regular surveys to prevent the introduction, establishment, and spread of these pests; regulates the movement of plant nursery stock; and facilitates establishing quarantines when necessary. The Department reports inspecting over 150,000 shipments at the ports, during fiscal year 1999, and rejecting more than 4,000 due to the presence of pests or violations of quarantine requirements (Report No. 00-13).
  
- **Agricultural Product Registration**—Finally, the Department seeks to protect the public's interest by regulating feeds, fertilizers, pesticides, forage, and seed through registering and licensing nearly 5,000 individuals and facilities employed in these areas. Further, the Department employs inspectors who confirm product registration and dealer licensing, and regularly sample products to ensure label statements, product quarantines, and that applicable laws are adhered to. During fiscal year 1999, the Depart-

ment conducted 761 inspections, collecting nearly 1,300 samples of feed, fertilizer, pesticides, and seed for testing. Despite these actions, the program lacks a systematic collection method that contains a comprehensive list of retailers and adjusts its sampling for violations to ensure representative samples are collected (Report No. 00-10).

Additionally, the audits of the Department identified several other ways it can better protect the public's interest. Specifically:

- **Revise Laboratory Services**—The Department can serve the public interest by revising two of its testing services, as reported in a performance audit of the State Agricultural Laboratory. The report found that the opportunity exists for the Lab to shift brucellosis testing of slaughtered cattle's blood samples from the State to a USDA-approved regional facility. By taking this step, the Department can shift 1.5 staff positions now used for brucellosis testing to other areas, such as food safety testing. Further, the Department should more fully recover its costs for testing pesticide samples for the Structural Pest Control Commission (SPCC) by accurately calculating the costs for this testing, and reflecting these costs in its service agreement with the SPCC (Report No. 00-14).
  
- **Increase Cash Controls**—Audit work also revealed the need for the Department to strengthen controls protecting monies paid to the Department. Specifically, audits of the Department's licensing functions (Auditor General Report No. 00-5) and the Federal/State Inspection Service Office in Nogales (Auditor General Report No. 00-10), reveal weaknesses in the Department's cash-processing controls. Currently, most of the Department's various licensing functions have only one employee receiving, processing, and depositing cash receipts, making it difficult to appropriately segregate these cash-handling functions and leaving the process open to theft or misappropriation. Additionally, the Department's Nogales Office, which

processes \$2 million in cash receipts annually, has one employee who calculates and sends invoices, receives payments, endorses checks, posts payments, stores checks, and completes deposit slips. Therefore, the Department should establish processes and procedures to appropriately segregate its cash-handling functions, and seek a periodic procedural review from the State's General Accounting Office to ensure it adheres to established procedures.

**4. The extent to which rules and regulations promulgated by the agency are consistent with legislative mandate.**

According to staff of the Governor's Regulatory Review Council (GRRC), the Department has done a commendable job of promulgating rules consistent with its legislative mandate for the seven Departmental programs audited. The Department is allowed by statute to develop rules on a variety of subjects, ranging from importing animals and poultry into the State to establishing rules necessary to certify laboratories. GRRC concluded that the Department has created all rules mandated by statute, and any rules that are lacking are rules promulgated at the Director's discretion.

However, in its most recent 5-year rule review cycle, the Department determined that more than 80 rules should be revised or clarified. While the Department has made some progress in addressing these rules, more time is required to fully address all of the rules that require revision.

**5. The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Department indicates that when it drafts rules, it solicits input from all affected parties. Rule proposals are

sent to applicable agricultural associations and interested parties, including local agricultural leaders. The Department then holds meetings with the affected parties, and also conducts surveys. The proposed rules, including notices of dates and locations of hearings being held to obtain public comment, are published in the Arizona Administrative Register.

The Department also conforms with the requirements of the open meeting laws by posting notices of public meetings at least 24 hours in advance, at the required locations, and having the required statement of where meeting notices will be posted on file with the Secretary of State.

**6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.**

The Department has the authority to investigate and resolve complaints involving the many aspects of its regulatory authority. For example, the Department investigates cases of reported livestock cruelty, neglect, or abuse and seizes animals that appear to be mistreated. During fiscal year 1999, the Department reports investigating 107 cases, confirming 42 of these cases, and seizing 27 livestock. The Department also investigates cases involving potential violations of the State's pesticide laws, including possible violations of worker protection standards or allegations of pesticide misuse. Additionally, the Department has the authority to investigate cases where native plants and archaeological artifacts were improperly removed or vandalized. In fiscal year 1999, the Department's staff received 36 complaints and conducted 184 investigations involving native plants or cultural artifacts.

However, the current series of audits found one deficiency in the Department's civil penalty authority. From July 1997 to June 2000, the Department penalized 21 pesticide misuse violations with fines. However, based on reviews of the violations and penalties, the Department's civil penalty actions are not strong enough to deter violators

from committing subsequent violations. Therefore, the Legislature should increase civil penalties for violations that may have a direct or immediate relationship to safety, health, or property damage, and the Department should revise its penalty system as laid out in administrative rule.

**7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under enabling legislation.**

The Attorney General and the county attorneys have authority to prosecute a wide variety of agriculture-related unlawful actions under the Department's enabling legislation. For example, the Department regulates the inspection of meat sold to the public under A.R.S. §§3-2041 through 3-2058. As such, the Department has authority to investigate and prosecute licensed establishments that illegally sell meat that has not been properly inspected according to state law. If the Department confirms the illegal sale, the Attorney General has authority to prosecute the licensee. Further, the Department's Animal Disease, Ownership and Welfare Protection staff investigate cases of stolen cattle, or cases of livestock cruelty, neglect, or abuse, and refer these cases to local county attorneys for prosecution.

As per A.R.S. §3-215.01, the Department's Attorney General Representative also has the authority to prosecute any person who knowingly transports, or causes the transportation of crop, pests or crop diseases into the State. The Department pursues these violations through county superior courts, and can pursue a civil penalty of up to \$5,000 for each violation. Further, the Department has responsibility for receiving complaints regarding agricultural pesticide use under A.R.S. §3-368. The Department consults with the Attorney General's Office to determine if prosecution is necessary, and can impose penalties up to \$10,000 for each violation in cases of serious pesticide misuse.

**8. The extent to which the agency has addressed deficiencies in the enabling statutes that prevent it from fulfilling its statutory mandate.**

The Department has made several changes to its enabling statutes during the last two years. During the 2000 legislative session, the Department requested, and the Legislature approved, only one bill to address specific statutory deficiencies. According to the Department, following a recent review of its statutory requirements and authority, it identified a number of statutes that needed to be updated and repealed. Laws 2000, Chapter 234, addressed a number of technical changes to statute, but also addressed the following changes:

- Establishing the Director's discretionary authority to enter into joint ventures promoting Arizona agriculture that do not compete with the private sector;
- Allowing inspection charges for dairies and feedlots to be paid monthly, rather than at the time of service; and
- Clarifying the Department's authority to regulate all domestic or commercial crops and plants.

During the 1999 legislative session, the Department requested, and the Legislature approved, three separate bills altering the Department's statutes. Specifically:

- **Laws 1999, Chapter 196—Certificate of Free Sale**  
This act improved the Department's enabling statutes by authorizing it to assess fees for Certificates of Free Sale. These Certificates are required by some foreign governments before Arizona products could be sold in their country. Before this act, the Department issued these certificates as a service to industry, but lacked the legislative authority to charge a fee to recover the costs of the service.
- **Laws 1999, Chapter 7—Food and Feed Adulteration**  
The bill improved the State's ability to address a potential contaminant of Arizona milk. The act made the



Department of Agriculture, rather than the Department of Health Services, responsible for approving the process for reducing aflatoxin content in milk. Aflatoxin is a fungus that infests cotton seeds, which are fed to dairy cattle. The aflatoxin passes from the seed to the cow, which in turn passes the fungus residue to its milk.

■ **Laws 1999, Chapter 8—Egg Refrigeration Temperature**

The act changed the storage temperature for shell eggs in order to conform to federal regulations. Specifically, the legislation required eggs intended for human consumption to be stored at 45 degrees rather than 60 degrees Fahrenheit.

**9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors in the Sunset Laws.**

The series of audit reports, issued in 2000, on the Department of Agriculture identified several statutory changes the Legislature may wish to consider. In the performance audit of the Animal Disease, Ownership and Welfare Protection program (Report No. 00-8), the Auditor General recommended:

- Amending A.R.S. §3-1336(A) to eliminate the need for the Department to conduct pre-transit cattle inspections to auctions and feedlots in order to reduce unnecessary cattle inspections.
- Revising A.R.S. §3-1337 to allow the Department to impose a travel fee for cattle inspections not to exceed \$15. The fee would be charged to customers who request the Department's inspectors to travel to their property to provide inspection services and allow the Department to recover its travel costs.
- Similarly, revising A.R.S. §3-1344(B) to increase the current inspection fee for horses and allowing the

Department to institute a separate travel fee not to exceed a maximum amount established by the Legislature.

The Department of Agriculture, Pesticide Compliance and Worker Safety program performance audit (Report No. 00-16) recommends strengthening the Department's civil penalty authority over pesticide applicators by amending A.R.S. §3-370 to increase the penalty for non-serious violations of pesticide application laws from \$500 to \$1,000.

Finally, the Department of Agriculture, Pest Exclusion and Management program performance audit (Report No. 00-13) suggests that the Department can recover more of its costs if the Legislature grants statutory authority to the Department to set fees in administrative rule, not to exceed a maximum amount determined by the Legislature, for issuing phyto-sanitary certificates.

**10. The extent to which the termination of the agency would significantly harm the public health, safety, or welfare.**

Regulating agricultural products, ensuring food safety, and detecting and eliminating animal diseases and agricultural pests is necessary for the protection of public health, safety, and welfare. For instance, the Department regulates the importation of livestock into the State, and investigates disease outbreaks, using its enforcement powers to eradicate and prevent the reintroduction of animal diseases that threaten agriculture and are potentially contagious to humans. Additionally, the Department strives to ensure pest-free agricultural products by preventing, controlling, and eradicating agricultural pests. Finally, the Department seeks to protect the environment and the health of agricultural workers by ensuring the proper use of agricultural pesticides. The Department monitors pesticide use, and ensures that workers are properly trained in the handling of pesticide products.

Terminating the Department of Agriculture would likely require that the federal government and other state agencies and local governments assume these and other Department functions. For example, under cooperative agreements with the USDA, the Department's meat inspectors are present whenever slaughtering or processing facilities are operating, and the Department collects and tests samples of meat and dairy products for microbiological, chemical, and physical food hazards. Should the Department not perform these functions, the USDA would likely have to assume these duties.

- 11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.**

Auditors' work suggests that the current level of regulation carried out by the Department is appropriate.

- 12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Department holds over 60 contracts with private parties. For example, the Department contracts with private individuals to plow-down cotton fields when the fields' owners refuse to do so as required by Arizona Revised Statutes. Further, an industry group also receives \$600 for publishing a list of cattle brands used in the State. Similarly, the State Veterinarian's Office contracts with private veterinarians to conduct post-mortem animal inspections in outlying areas and the Commodity Development and Promotion Program pays \$10,000 annually to support a spokesperson for the Arizona Grown program.

The Department has also explored privatizing some of the testing performed by the State Agricultural Laboratory. However, the Department received no bids in re-

sponse to a 1997 request for proposals. More recently, the Department has initiated a study, in cooperation with the Governor's Office for Excellence in Government, to evaluate the feasibility of privatizing the inspection and registration of Arizona equines. Working with the Governor's Office for Excellence in Government, by December 2000 the Department will determine the costs of these services and compare them to private companies' costs. As a result, the Department may solicit bids from private companies wishing to take over equine inspection services.

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## Other Performance Audit Reports Issued Within the Last 12 Months

<p>99-19 Department of Health Services— Sunset Factors</p> <p>99-20 Arizona State Board of Accountancy</p> <p>99-21 Department of Environmental Quality—Aquifer Protection Permit Program, Water Quality Assurance Revolving Fund Program, and Underground Storage Tank Program</p> <p>99-22 Arizona Department of Transportation A+B Bidding</p> <p>00-1 Healthy Families Program</p> <p>00-2 Behavioral Health Services— Interagency Coordination of Services</p> <p>00-3 Arizona’s Family Literacy Program</p> <p>00-4 Family Builders Pilot Program</p> <p>00-5 Department of Agriculture— Licensing Functions</p> <p>00-6 Board of Medical Student Loans</p> <p>00-7 Department of Public Safety— Aviation Section</p>	<p>00-8 Department of Agriculture— Animal Disease, Ownership and Welfare Protection Program</p> <p>00-9 Arizona Naturopathic Physicians Board of Medical Examiners</p> <p>00-10 Department of Agriculture— Food Safety and Quality Assurance Program and Non-Food Product Quality Assurance Program</p> <p>00-11 Arizona Office of Tourism</p> <p>00-12 Department of Public Safety— Scientific Analysis Bureau</p> <p>00-13 Arizona Department of Agriculture Pest Exclusion and Management Program</p> <p>00-14 Arizona Department of Agriculture State Agricultural Laboratory</p> <p>00-15 Arizona Department of Agriculture Commodity Development Program</p> <p>00-16 Arizona Department of Agriculture Pesticide Compliance and Worker Safety Program</p>
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## Future Performance Audit Reports

Arizona State Boxing Commission

Department of Economic Security—Division of Developmental Disabilities

Department of Corrections—Security Operations