



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Sunset Review

Department of Agriculture—Sunset Factors

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Debra K. Davenport
Auditor General

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September 27, 2010

Members of the Arizona Legislature

The Honorable Janice K. Brewer, Governor

Mr. Donald Butler, Director
Department of Agriculture

Transmitted herewith is a report of the Auditor General, a sunset review of the Department of Agriculture. This report is in response to a November 3, 2009, resolution of the Joint Legislative Audit Committee and was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq.

As outlined in its response, the Department of Agriculture plans to implement all of the recommendations.

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 28, 2010.

Sincerely,

Debbie Davenport
Auditor General

Attachment

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INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a review of the Department of Agriculture (Department) using the 12 criteria in Arizona's sunset law. The analysis of the 12 sunset factors was conducted pursuant to a November 3, 2009, resolution of the Joint Legislative Audit Committee and prepared as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

This sunset review is the second of two reports on the Department. The first report was a performance audit on the Department's food safety and quality assurance inspection programs.

Department regulates and supports agriculture

The Department's mission is to regulate and support Arizona agriculture in a manner that encourages farming, ranching, and agribusiness while protecting consumers and natural resources. The Department regulates agricultural production and processing within the State, educates industry to foster compliance with applicable regulations, promotes the general welfare of the agricultural community, and protects public health and safety.

Organization

The Department has three divisions and also includes other programs such as a state agricultural laboratory and an agriculture consultation and training program. The Department reported 320.95 authorized full-time equivalent (FTE) positions for fiscal year 2010, including 80.25 vacancies as of August 1, 2010. According to department officials, the Department does not have funding to fill most vacant positions.

The Department's three divisions are:

- **Animal Services Division (73.37 FTEs, 21 vacancies)**—This division seeks to protect and improve the health, quality, and marketability of Arizona animals and

animal products by identifying, diagnosing, and preventing existing and emerging diseases, protecting humans from contagious diseases, and responding to emergencies. Additionally, the division is responsible for enforcing laws concerning livestock movement, sale, import and transport, and conducting food quality and safety inspections of meat, dairy, and egg products produced, processed, and imported in or to Arizona. Lastly, the division responds to complaints and conducts investigations into animal abuse, neglect, and theft.

- **Environmental Services Division (29.58 FTEs, 9 vacancies)**—This division comprises four main areas.
 - First, it processes most of the Department’s licenses, including feed, fertilizer, and seed dealer and labeler licenses.
 - Second, the division’s nonfood quality program is responsible for conducting marketplace inspections of these same products to verify the accuracy of label statements and product guarantees to help ensure product quality for customers.
 - Third, the division’s pesticide compliance area is responsible for protecting the public, agricultural workers, and pesticide handlers by conducting field inspections and investigating complaints of misuse to help ensure that farmers and commercial business use agricultural pesticides according to state and federal laws.
 - Finally, the division’s office of special investigations seeks to provide law enforcement support to other divisions by conducting criminal investigations of alleged native plant and livestock law violations.
- **Plant Services Division (86.7 FTEs, 12.5 vacancies)**—This division seeks to protect the public and the agricultural industry in Arizona from the introduction of agricultural pests that can increase industry production costs, reduce the quality of products, and threaten demand for Arizona products. To help prevent the introduction and spread of unwanted pests, the division is responsible for establishing and enforcing external and internal quarantines. External quarantines help prevent the introduction of hazardous plant pests into the State and internal quarantines help prevent the spread of regulated plant pests of concern within the State.

In addition to its three divisions, the Department has the following four programs:

- **Citrus, Fruit and Vegetable Standardization and Fresh Produce Grade Inspection (84.8 FTEs, 24.75 vacancies)**—This program licenses produce packers, dealers, and shippers. Historically, the program inspected produce to

verify quality standards such as color, shape, decay, size, maturity, and labeling. However, beginning in August 2009 and based on input from the produce industry, the Department changed this program's focus to emphasize produce safety by discontinuing quality inspections and instead promoting food safety audits (see Auditor General Report No. 10-04 for additional information on this change). With the shift from standardization to safety, 15 of the Department's standardization inspectors are either already certified or are being trained for certification to perform food safety audits. Additionally, this program seeks to enforce U.S. import requirements and marketing order restrictions at Arizona's border with Mexico by performing shipping point and terminal market produce inspections through a cooperative agreement with the United States Department of Agriculture (USDA). The Federal-State Inspection Service Program is paid for by industry fees.

- **State Agricultural Laboratory (19.5 FTEs, 4 vacancies)**—Laboratory staff seek to support each of the Department's divisions by analyzing agricultural products for pesticide, drug, and antibiotic residues; identifying plant pathogens and insects; and testing products including meat, milk, feed, fertilizer, and pesticides to help ensure that consumers receive safe and quality products that meet label guarantees. As of August 2010, the Department was in the process of relocating the State Agricultural Laboratory in response to budget reductions and anticipates completing the relocation by the end of calendar year 2010. The Department will continue to carry out laboratory functions in two state health laboratory facilities (see Budget section, page 4).
- **Agriculture Consultation and Training (10 FTEs, 3 vacancies)**—This program is responsible for increasing voluntary compliance and awareness of regulatory requirements and providing education on pesticide safety, air quality, and agricultural conservation. According to the Department, this compliance assistance program is unique to an agricultural regulatory agency. The program is not part of any of the Department's enforcement programs, allowing the agricultural community to request assistance without regulatory intervention. In addition, the program houses the Livestock and Crop Conservation Grant and Specialty Crop Block Grant programs; the Arizona Citrus Research, Iceberg Lettuce Research, and Grain Research and Promotion Councils; the Agricultural Employment Relations Board; and the Arizona Agricultural Protection Commission.
- **Administrative Services (17 FTEs, 6 vacancies)**—This program, which includes the Office of the Director, is responsible for legislative services, rules, legal services, strategic planning, budgeting, and public information. Additionally, it seeks to support departmental programs with accounting, payroll, human resources, training, information technology, procurement, and facility management services.

Budget

The Department received total revenues of more than \$22.4 million in fiscal year 2010, as shown in Table 1 (see page 5). Approximately, sixty-six percent of these revenues come from State General Fund appropriations and charges for goods and services that include inspection and pesticide registration fees. However, the Department's revenues have been decreasing since fiscal year 2008. Specifically, State General Fund reductions from fiscal year 2008 to 2010 have totaled more than \$3.3 million. As a result, the Department has reduced services, personnel, and rent expenses. For example, in August 2008, the Department stopped conducting agricultural inspections of food products, livestock, and landscape plants at Arizona's ports of entry. According to a department official, one consequence of not conducting agricultural inspections at Arizona's ports of entry is that pests, such as red imported fire ants, that were commonly intercepted at ports of entry are now detected more frequently in the State's interior. Altogether, the Department reported that it laid off 42 employees during fiscal years 2009 and 2010. Additionally, as of August 2010, the Department was in the process of relocating the State Agricultural Laboratory to two state health laboratory facilities. As a result, the fiscal year 2010 budget included a rent savings of more than \$259,000 as a part of the agency-wide lump sum reduction that will be achieved through the relocation of the agricultural laboratory facility located in Phoenix.

Scope and Methodology

The Department's performance was analyzed in accordance with the 12 statutory sunset factors. Prior audit work in the Department's food safety and quality assurance inspection programs (see Auditor General Report No. 10-04) provided a basis for the sunset factors response. This report also includes information obtained from department officials, department reports, the Department's Web site, the Governor's Regulatory Review Council, the Secretary of State's Office, and the AFIS *Accounting Event Transaction File* and *Status of General Ledger-Trial Balance* screen for fiscal years 2008 and 2009.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Auditor General and staff express appreciation to the Department's Director and staff for their cooperation and assistance throughout the review.

Table 1: Schedule of Revenues, Expenditures, and Changes in Fund Balance ¹
Fiscal Years 2008 through 2010
(Unaudited)

	2008	2009	2010
Revenues:			
State General Fund appropriations	\$ 11,903,225	\$ 10,184,660	\$ 8,576,257
Charges for goods and services ²	6,826,651	6,814,734	6,216,394
Intergovernmental	4,084,798	3,048,350	3,869,698
Land Conservation Fund ³	2,000,000	2,000,000	2,000,000
License and permit fees ⁴	1,356,154	1,533,668	1,517,643
Fines, forfeits, and penalties	54,797	51,947	81,232
Other	<u>577,890</u>	<u>278,219</u>	<u>203,385</u>
Gross revenues	26,803,515	23,911,578	22,464,609
Remittances to the State General Fund ⁵	(991,733)	(954,796)	(852,225)
Remittances to the Water Quality Assurance Revolving Fund ^{2,4}	<u>(963,625)</u>	<u>(1,098,160)</u>	<u>(935,243)</u>
Net revenues	<u>24,848,157</u>	<u>21,858,622</u>	<u>20,677,141</u>
Expenditures and operating transfers:			
Personal services and related benefits	16,132,476	14,451,323	13,811,911
Professional and outside services	1,177,973	923,766	1,074,726
Travel	1,138,422	1,045,293	1,001,163
Aid to organizations and individuals ⁶	2,609,678	1,741,879	3,554,237
Other operating	2,367,073	2,265,373	1,885,974
Equipment	<u>534,205</u>	<u>215,963</u>	<u>208,772</u>
Total expenditures	23,959,827	20,643,597	21,536,783
Operating transfers out ⁷	<u>447,705</u>	<u>1,270,400</u>	<u>587,329</u>
Total expenditures and operating transfers out	<u>24,407,532</u>	<u>21,913,997</u>	<u>22,124,112</u>
Net change in fund balance	440,625	(55,375)	(1,446,971)
Fund balance, beginning of year	<u>10,518,240</u>	<u>10,958,865</u>	<u>10,903,490</u>
Fund balance, end of year ⁸	<u>\$ 10,958,865</u>	<u>\$ 10,903,490</u>	<u>\$ 9,456,519</u>

¹ The table includes all department financial activity. It does not include the Arizona Grain Council, Arizona Iceberg Lettuce Research Council, Arizona Citrus Research Council, Arizona Cotton Research and Protection Council, and Arizona Beef Council, which were not within the scope of this audit, or Leafy Green Products Shipper Marketing Agreement, because the Department provides only legal and administrative services.

² Includes inspection fees of approximately \$4.8 million in fiscal years 2008 and 2009 and \$4.2 million in fiscal year 2010, as well as approximately \$1.2, \$1.5, and \$1.3 million for fiscal years 2008, 2009, and 2010, respectively, in pesticide registration fees authorized by A.R.S. §3-351(D) and Laws 2008, Ch. 291, §12 and Laws 2009, 4th S.S., Ch. 3, §23. These laws require 75 percent of the fees in fiscal year 2008 and approximately 68 percent in fiscal years 2009 and 2010 to be remitted to the Water Quality Assurance Revolving Fund.

³ Consists of amounts appropriated from the Land Conservation Fund's Public Conservation Account in accordance with A.R.S. §41-511.23 for a grant program the Department administers. The purpose of the grants is to allow individual landowners and lessees of state or federal land to implement conservation-based management alternatives or to reduce livestock or crop production to preserve open space.

⁴ Includes nearly \$60,000 in fiscal year 2008 and approximately \$50,000 in fiscal years 2009 and 2010 of fertilizer license fees authorized by A.R.S. §3-272(B) that are remitted to the Water Quality Assurance Revolving Fund.

⁵ Amount consists of certain revenues remitted to the State General Fund in accordance with statutes. For example, the reimbursement from the U.S. Department of Agriculture for its federal-state cooperative program is remitted in accordance with A.R.S. §3-2049.

⁶ According to a department official, the increase in Aid to Individuals and Organizations in fiscal year 2010 is primarily from an increase in grants disbursed through the Livestock and Crop Conservation Grant Program.

⁷ Amounts consist primarily of transfers to the State General Fund in accordance with Laws 2008, Ch. 53, §§ 2 and 23 and Ch. 285, §§24 and 46; Laws 2009, 1st S.S., Ch. 1, §§4, 5, and 7, and 5th S.S., Ch. 1, §2; and Laws 2010, 7th S.S., Ch. 1, §148.

⁸ According to a department official, nearly all of the ending fund balance is restricted for specific purposes such as federal programs, awarded grants, and state regulatory programs.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) Accounting Event Transaction File for fiscal years 2008 and 2009; the AFIS Management Information System Status of General Ledger-Trial Balance screen for fiscal years 2008 and 2009; and department-provided information for fiscal year 2010.

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 Department of Agriculture (Department) should be continued or terminated.

1. The objective and purpose in establishing the Department.

The Legislature passed Laws 1989, Ch. 162, establishing the Arizona Department of Agriculture to provide a uniform and coordinated agricultural program and policy in the State. The Department replaced four smaller state agencies that had carried out most of the Department's duties: the Arizona Commission of Agriculture and Horticulture, the Arizona Livestock Board, the State Egg Inspection Board, and the State Dairy Commissioner. The Department's mission is *"to regulate and support Arizona agriculture in a manner that encourages farming, ranching, and agribusiness while protecting consumers and natural resources."*

In order to accomplish its mission, the Department performs four central functions:

- First, it issues approximately 70 different agriculture-related licenses and registrations, including licenses for meat and poultry plants, pesticide users and applicators, and livestock self-inspection.¹
- Second, it inspects food products including meat, poultry, dairy, eggs, and fresh produce for food safety and quality. The Department is also responsible for conducting nonfood-products inspections for feeds, fertilizers, pesticides, and seed to ensure the products' quality and labeling accuracy.
- Third, according to the Department, its laboratory employees conduct food safety testing of meat and dairy products; analyze agricultural products for pesticide, drug, and antibiotic residues; and test nonfood products to verify label accuracy.
- Lastly, the Department is responsible for investigating complaints from the public and from other government entities, as well as on its own initiative.

¹ The livestock self-inspection program allows approved livestock owners to transport cattle within the State of Arizona without first obtaining an inspection from an animal health and welfare inspector through the use of self-inspection certificates.

These include complaints of animal cruelty, lost or stolen cattle, or pesticide misuse. In addition, the Department has authority to initiate investigations concerning possible violations of pesticide-use requirements or native plant laws, or occurrences of animal diseases that constitute a threat to the livestock or poultry industries.

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

The Department has taken actions to meet its overall objectives and purpose through several of its functions. For example, the Department issues licenses, permits, certifications, and registrations that authorize businesses to conduct certain regulated activities. According to a department report that covers licensing activities for fiscal year 2009 and was submitted to the Governor's Regulatory Review Council, the Department issued more than 99 percent (23,079 out of 23,085) of its licenses within statutory time frames. For example, for fiscal year 2009 the Department reported that it issued 100 percent of its state meat inspection service licenses, native plants movement permits, and commercial pesticide applicator certifications in a timely manner. Timeliness is important to help ensure that problems are promptly identified and corrected and that businesses can carry out their operations without unnecessary delays.

Another department objective is to ensure that the public's food supply of meat and poultry, dairy, and eggs meets established standards for quality and safety. For example, meat and poultry regulations require inspections to help ensure that animals are disease free, facilities are clean and sanitary, and meat and poultry products are wholesome and properly labeled. The Department carries out these food safety activities in cooperation with the U.S. Department of Agriculture (USDA) and the U.S. Food and Drug Administration (FDA), which perform reviews of the Department's meat and poultry and dairy programs, respectively. Both the USDA and the FDA conduct reviews every 3 years, and the USDA also conducts a self-assessment review every year. During reviews in 2008 and 2009, the USDA and FDA found that the Department operated its state meat and poultry inspection program in compliance with federal standards and that its dairy program was in substantial compliance with the pasteurized milk ordinance that represents the minimum standards adopted in all 50 states.

The Department also seeks to prevent the introduction of nonnative plant pests. According to the Department, it follows a comprehensive, risk-based process that includes (1) establishing and enforcing external quarantines to prevent introduction of hazardous plant pests that threaten agriculture, the environment, and the public; (2) early detection of hazardous plant pests to minimize the pests' impact and stakeholders' mitigation costs; and (3) inspecting and certifying agricultural and horticultural commodities for domestic and international export. For example, through detection surveys, inspectors discovered the

Asian Citrus Psyllid in a small, isolated location in Yuma County and determined that it is not known to be established elsewhere in the State. The Asian Citrus Psyllid is an insect that causes severe stunted growth, unripened fruit, and eventual mortality of citrus plant species, and the Department is working to eradicate it. According to a trade specialist from the USDA, Arizona enjoys a pest-free status from many federally regulated pests.

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

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

- **Food safety**—Department inspectors act in the public interest by helping to ensure that Arizona has safe, wholesome, and properly labeled meat, poultry, milk, and eggs. According to a department official, during fiscal year 2009 the Department performed over 30,500 meat and poultry inspections, issued 88 noncompliance reports, and took 420 microbiological samples of meat for testing at official labs. The Department also reported that as of March 2010, no meat and poultry products from department-inspected facilities had been recalled for 12 years. Additionally, the Department conducted 578 dairy-related inspections, removing over 210,000 pounds of milk from sale due to noncompliance with regulations in fiscal year 2009. Lastly, state egg inspectors performed over 900 wholesaler and retailer egg inspections and retained over 96,000 dozens of eggs that did not meet egg safety and quality standards to prevent them from sale to the public in fiscal year 2009.
- **Animal disease, ownership, and welfare protection**—State veterinarians and livestock inspectors seek to protect agricultural animals from disease or abuse, livestock owners against theft, and the public from harmful livestock interactions. The Department reported conducting over 2,000 animal care investigations, 42 theft investigations, and over 1,600 animals-at-large investigations in fiscal year 2009. In investigations where livestock officers find an animal and question the animal's ownership, the Department has the authority to seize the livestock and set up a hearing to determine the ownership. If the rightful owner does not appear in court, livestock officers can sell the livestock and monies from the sale are deposited into the Livestock Custody Fund.
- **Nonfood product quality assurance**—Department inspectors help to ensure the quality of feeds, fertilizers, pesticides, and seeds by registering pesticides and fertilizers; licensing feed, fertilizer, and seed dealers and labelers; and regularly sampling these products to ensure that label statements, product guarantees, and applicable laws are adhered to. The Department reported inspecting over 9,400 feed, fertilizer, pesticide, and

seed labels in the marketplace; collecting over 890 samples; and finding over 100 samples deficient through laboratory analysis in fiscal year 2009. Additionally, the Department reported issuing 402 notices of violations and 400 cease and desist orders in fiscal year 2009.¹

- **Laboratory tests**—To assist with regulatory activities and help ensure safe and high-quality food and agricultural products, the Department’s laboratory employees analyze samples of meat and dairy products, feeds, fertilizers, pesticides, insects, and plant pests. They provide these services to the Department’s regulatory divisions and others as provided by law. The Department reported completing approximately 61 percent (1,041 out of 1,719) of its high-priority samples by the due date in fiscal year 2009. According to a department official, high-priority samples are those where an imminent human health concern exists or where there is the potential for closing a business. Although the Department plans to relocate the State Agricultural Laboratory by the end of calendar year 2010 because of budget cuts, its staff will continue to carry out these functions at two state health laboratory facilities.
- **Worker safety**—According to department data, it conducted 276 worker safety inspections at agricultural establishments in fiscal year 2009 and found that 26 percent (72 out of 276) had noncompliance issues that were directly related to human health and safety such as a failure to train workers or pesticide handlers about pesticide safety or failure to provide decontamination supplies. To help protect agricultural workers and pesticide handlers employed in agricultural establishments, the Department has adopted most federal worker protection standards by reference in its administrative rules. Under A.R.S. §3-3113, an employer who violates agricultural safety laws may be assessed a civil penalty of not more than \$10,000 for each violation. For fiscal year 2009, the Department reported assessing \$18,666 in worker protection and safety penalties.

The Office of the Auditor General’s performance audit of the Department’s food safety and quality assurance inspection programs (see Report No. 10-04) identified two ways the Department could better operate in the public interest:

- **Promote produce safety audits**—The Department could better serve the public’s interest by using some of its federal grant monies to assist companies with produce-safety audits, which help them ensure they are using good agricultural practices and good handling practices to protect against contamination. The audit found that only one of 18 projects that the Department funded through the Specialty Crop Block Grant Program focused directly on food safety in fiscal year 2009. In addition to other uses such as crop research and increasing nutrition knowledge about specialty

¹ A notice of violation warns a manufacturer or distributor of violations related to feed, fertilizer, pesticide, and seed products offered for sale or distribution in Arizona. Multiple warnings may result in products being removed from sale or distribution as well as injunctions or seizure of violative products. A cease and desist order is issued when a company fails to come into compliance and requires that the product be removed from sale and distribution in Arizona.

crops, these grant monies can be used for projects that provide consultation or trainings to prepare growers and handlers for produce-safety audits, or to help offset the industry's costs for safety audits. Thus, the Department could take a more proactive approach by using some of its grant money to initiate produce-safety projects such as a cost-share program. Because food safety audits can be expensive, some states' departments of agriculture have started cost-share programs to help produce growers and handlers in their state pay for these audits. For example, companies pay \$92 per hour including travel time for audits by USDA-licensed inspectors, and the audits can last between 2 and 7 hours with 1 to 9 hours of travel time.

- **Promote food defense measures**—Although food defense regulations are limited, the Department could do more to promote security measures at its regulated facilities. Two of Arizona's most valuable agricultural commodities, milk and leafy greens, are among the foods most vulnerable to intentional contamination. Although the food industry is largely responsible for protecting the commodities, the extent to which establishments have adopted security measures varies. Steps the Department could take to promote security measures include providing more of the facilities that it regulates with a voluntary self-assessment tool, increasing food defense awareness during inspections, promoting more food defense reviews as a part of voluntary audits, and offering more information on its Web site as some other states have done.

4. The extent to which rules adopted by the Department are consistent with the legislative mandate.

General Counsel for the Auditor General has analyzed the Department's rule-making statutes and believes that the Department has fully established rules required by statute.

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

The Department uses various approaches to inform the public of its rulemaking activities. First, the Department files rulemaking notices with the Secretary of State's Office for publication in the *Arizona Administrative Register*. Second, the Department uses its Web site to inform the public about proposed rulemakings. The Web site contains the status of proposed rulemakings, including a link to the proposed rule itself. Lastly, the Department reported that it contacts businesses and organizations that may be affected by rulemakings. For example, the Department notified licensed egg dealers by mail and received and considered over 1,000 written and 7 oral comments for its poultry husbandry

rules that went into effect October 1, 2009. In some cases, statute provides the public with special recourse for department rules that may affect them. A.R.S. §3-3108 states that a person who may be adversely affected by an agricultural safety rule may file a complaint with their county's superior court within 60 days after the Department adopts the rule.

The Department also complies 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 Department has been able to investigate and resolve complaints that are within its jurisdiction.

The Department has the authority to investigate and resolve complaints involving several aspects of its regulatory authority, and it resolves many of these complaints in a timely manner. According to the Department, it investigated 2,072 complaints in fiscal year 2009. However, the Department could improve its guidance and oversight for complex complaint investigations of reported livestock cruelty, neglect, or abuse. During the audit, auditors learned about one complaint involving allegations that a livestock case was not investigated properly or in a timely manner. Therefore, auditors looked more closely into the Department's process for investigating livestock complaints. Auditors found that the Department's policies and procedures for livestock investigations are outdated and could be enhanced by including time frames for how long various stages of an investigation should take. Specifically:

- **Department could benefit from establishing guidelines for involving Office of Special Investigations in complex livestock cases**—The Department's policies and procedures for handling livestock complaints, written in 1998, do not contain guidance regarding when to consider involving the Department's Office of Special Investigations (Office) in a case. The Office, formed in 2000, has one investigator who is highly experienced in investigating criminal misconduct regarding the theft and killing of livestock. According to a department official, the Office investigates approximately 25 to 30 livestock felony cases per fiscal year. The official explained that livestock officers submit their initial reports to an assistant state veterinarian, who determines which cases to involve the Office in. For example, according to department officials, because animal theft cases are often complex and require a lot of time to investigate, the assistant state veterinarian typically involves the Office in these cases. However, other state agencies that investigate complex cases, including the Department of Public Safety and the Department of Economic Security, Child Protective Services, have established written guidelines for considering factors such

as the nature and seriousness of the case in determining how to handle the case. Using the assistant state veterinarian's current practice as a starting point, the Department should establish guidelines for involving the Office in appropriate complaints that take into account the type and severity of the complaint, in order to better ensure that the Office handles the most serious complaints it receives in a timely manner.

- **By establishing time frames for key steps, the Department could better monitor its handling of livestock complaints**—According to department officials, the Department initially responds to every livestock complaint within 48 hours. However, department officials told auditors that they have not established time frames for other steps in its complaint investigation process. Since 2008, the Department has tracked the number and types of livestock complaints it receives in the Agricultural Incident Report System (AIRS) database. The Department could modify this database and use it to track the timeliness of complaint investigations and/or trigger supervisory review to ensure these investigations are on track. For example, the Department of Public Safety uses its database to notify supervisors when a case is due for a 30-day review of case progress. Similarly, Child Protective Services uses its database to help manage and monitor its workload by providing data on timeliness of initial response, investigation completion, and recording of investigation findings. Because the Department receives many complaints—for example, the Department reported receiving over 240 calls from the public reporting suspected livestock neglect or abuse and loose or stray animals in March 2010—establishing time frames and monitoring the progress of complaint investigations would help to ensure that complaints are completed in a timely manner.

Therefore, to help better manage livestock complaints, the Department should:

- Establish guidelines for when to involve the Office of Special Investigations in a complaint;
- Establish time frames for key steps in the complaint-handling process, such as supervisory review; and
- As resources are available, modify the AIRS database and use it to periodically monitor its inspectors' timeliness in responding to complaints and conducting investigations into alleged livestock neglect, abuse, and theft.

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, and completes these investigations

in a timely manner. Specifically, in all 27 cases opened in fiscal year 2009 where the Department issued a citation, penalty, de minimus violation, or referral to the U.S. Environmental Protection Agency, the Department took action within 6 months of the date of the inspection that found the violation, as required by statute. In addition, statute requires the Department to issue citations for serious and nonserious pesticide use violations within 10 and 20 days, respectively, after completing the investigation. Auditors' review of all 8 cases where the Department issued a citation for serious or nonserious pesticide use violations between July 13, 2009 and August 3, 2010, determined that the Department complied with these time frames. Further, the Department assesses penalties based on a point system that considers health effects, environmental consequences, culpability, and prior violations or citations. During fiscal year 2009, the Department reported assessing over \$25,000 and collecting nearly \$16,500 in worker protection and safety and pesticide use penalties.

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

The Attorney General and/or the county attorneys have authority under department statutes to prosecute a wide variety of agriculture-related unlawful actions under the Department's enabling legislation. For example, the Department regulates the inspection and sale of meat to the public under A.R.S. §§3-2041 through 3-2058 and A.R.S. §§3-2081 through 3-2098. As such, the Department has authority to investigate 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 and the county attorney each have authority to prosecute the licensee. However, according to a department official, the Department has not needed to refer any cases to these attorneys. Further, department staff investigate cases of alleged livestock abuse and are required to cooperate and coordinate their activities with appropriate federal, state, and local law enforcement agencies in apprehending and prosecuting violators of livestock laws.

In addition, under A.R.S. §3-215.01, the Department has the authority to bring an action in the superior court against any person who knowingly transports or causes the transportation of crop pests or crop diseases into the State. The court may assess a civil penalty of up to \$5,000 for each violation. Further, under A.R.S. §3-368, the Department has responsibility for receiving complaints regarding agricultural pesticide use. The Department consults with the Attorney General's Office on these pesticide complaints and can impose penalties up to \$10,000 for each serious violation.

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

The Department proposed and the Legislature enacted changes to the Department's enabling statutes in 2005 and 2008. Specifically:

- **Laws 2005, Chapter 173—Omnibus Bill**—This act made several changes to the Department's enabling statutes. For example, it required the Director to adopt rules to specify labeling requirements for each container of agricultural or vegetable and ornamental plant seed sold in Arizona. According to a department official, this change allowed the Department to prescribe seed-labeling requirements consistent with other states' and gave it more flexibility to make future changes to seed labeling. In addition, this legislation enacted permitting requirements for moving or salvaging saguaro cacti and broadened the category of offenders guilty of a class 5 felony when any person intentionally drives livestock off its range without the owner's consent.
- **Laws 2008, Chapter 32—Poultry Husbandry**—This act allowed the Department to establish minimum standards for egg-processing plants and sanitary standards for egg processing and required it to adopt poultry husbandry rules for the production of eggs sold in the State. The Department adopted a poultry husbandry rule in 2009 that requires all egg producers in the State to meet the USDA's facility and sanitary operation requirements. These requirements help ensure eggs are properly washed and sanitized during egg grading and packing.

9. The extent to which changes are necessary in the laws of the Department to adequately comply with the factors in the sunset law.

Auditors' review of the Department's food safety and quality assurance inspection programs (see Auditor General Report No. 10-04) identified two statutory changes that could reduce the amount of State General Fund monies spent on these programs:

- First, auditors found that more of the Dairy and Dairy Products Inspection Program's costs should be shared with the industry, as is done in some other states. The audit recommended that the Department should first review its program costs to ensure these costs are reasonable and appropriate, then consider other factors such as the impact of fee increases on the industry, and finally propose revised fees to the Legislature. The audit further recommended that after receiving the Department's proposal, the Legislature should consider modifying statute to raise existing dairy inspection program fees, authorize the Department to create additional fees, and/or modify the level of regulation the Department provides.

- Second, auditors found that if the Legislature transferred all meat and poultry inspections to the USDA, it would save over \$400,000 per year in State General Fund monies. The USDA handles inspections in 23 other states. The USDA has ultimate responsibility for meat and poultry inspection, although states can voluntarily enter into agreements with the USDA to inspect establishments that do not sell in interstate commerce. The audit also recommended that if the Legislature decides to retain the state meat and poultry inspection program, the meat and poultry industry should pay the regulatory costs. The state program primarily benefits the industry by allowing industry members to choose between two regulators.

10. The extent to which the termination of the Department would significantly harm the public's health, safety, or welfare.

Regulating agricultural products, helping to ensure food safety, and detecting and eliminating animal diseases and agricultural pests are necessary to protect the public health, safety, and welfare. For instance, the Department helps protect the public by registering pesticides and fertilizers; issuing licenses to feed, fertilizer, forage, and seed dealers and labelers; monitoring pesticide use; and seeking to ensure that workers are properly trained in handling pesticide products. The Department also helps protect the public's welfare by helping to ensure safe meat, poultry, milk, and eggs and by investigating disease outbreaks among livestock that could threaten agriculture and are potentially transmissible to humans. Finally, it helps protect agriculture in Arizona by preventing, controlling, and eradicating agricultural pests.

Terminating the Department would likely require the federal government and other state agencies and local governments to assume these and other department functions.

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

Audit work performed on the Department's food safety and quality assurance inspection programs suggests that the level of regulation is appropriate (see Auditor General Report No. 10-04). For example, the Legislature could transfer meat and poultry inspections to the USDA, but if the State retains the inspection program the Department could not reduce the level of meat and poultry regulations, because federal law establishes the requirements meat and poultry facilities must meet, regardless of whether they are inspected by federal or state inspectors. Similarly, it could not reduce its enforcement of the pasteurized milk ordinance, which is the

basic nationally accepted standard, without affecting the dairy industry's ability to market milk products in other states.

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

The Department maintains contracts with private parties for various services, and audit work did not identify any areas where the Department should consider using additional private contractors. For example:

- The Department contracts with private veterinarians to inspect animals slaughtered at official state meat and poultry plants when a department veterinarian is not available. Reasons for these inspections include assessing whether any reportable disease conditions are present that would render either part or all of the animal unfit for human consumption.
- Using monies from the Pesticide Fund as authorized by the Legislature beginning in fiscal year 2008, the Department contracts with a plastics company to collect pesticide containers and transport them to a location where they can be properly recycled, and uses an environmental services company to transport and dispose of unused pesticides in order to help pesticide users properly dispose of these materials. The registration fees that pesticide companies pay is the source of revenue for the Pesticide Fund. According to the Department, contracting with a waste disposal company not only helps pesticide users but also helps protect the environment by ensuring proper disposal of these unusable pesticides that otherwise may be forgotten.
- In fiscal year 2009 the Department contracted with a pest control company to eradicate Asian Citrus Psyllid—a federally regulated pest that poses a serious threat to Arizona's citrus trees because it may produce misshapen, unmarketable, bitter fruit—that department surveys found in a small, isolated location in Yuma County. According to a department official, the eradication program is having success. Specifically, he stated that the Department has treated ten sites where they have detected Asian Citrus Psyllid and their ongoing trapping and visual inspection in those treatment areas has not found re-infestation.

AGENCY RESPONSE

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Arizona Department of Agriculture

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September 22, 2010

Debra K. Davenport
Auditor General
2910 North 44th Street, Suite 410
Phoenix, AZ 85018

Dear Ms. Davenport:

I have reviewed the revised draft preliminary report of the sunset review of the Arizona Department of Agriculture. This letter provides the Arizona Department of Agriculture's written comments on the report.

Sunset Factor 3. The extent to which the Department has operated within the public interest.

Under this sunset factor, the Auditor General stated that the Department should:

- Promote produce safety audits
- Promote food defense measures

Agency Response:

The Department (through the USDA-Agricultural Marketing Service Specialty Crop Block Grant Program pass through grants), the Arizona Leafy Greens Marketing Agreement (an industry funded initiative), the Arizona Iceberg Lettuce Research Council (industry funded) and the Arizona Grain Research and Promotion Council (industry funded) have granted funds totaling \$740,964 for 19 separate projects directly related to food safety. During these last four years, the 19 projects addressed a myriad of topics directly related to food safety awareness, education and research. These grants funded or are currently funding the following projects:

- Survey of exposure estimates of uranium in desert lettuce
- A Survey of Coliform Bacteria in Irrigation Canal Waters to Partially Explain why Arizona Head Lettuce is Safe
- Preliminary Assessment of Microbial Risk to Lettuce from Canine Waste on Canal Banks

- The assessment of a site-specific yield determination and field-level tracking system for Iceberg lettuce production in the desert southwest.
- Developing More Efficient Systems to Avoid Cross-Contamination and Decontaminate Leafy Greens from Harvest to Finished Product
- Estimating the Risk Posed by Birds in Leafy Greens Fields in the Low Desert
- Effect of Microflora Competition on Growth and Survival of Escherichia Coli O157:H7 in Leafy Vegetables
- A Producer-Friendly, Web-based Site-Specific Postharvest Security and Field-level Tracking System for Vegetable Growers and Shippers in the Desert Southwest
- Equipment for Enhancement of Food Safety Research in the Southwestern Desert
- Evaluation of exposure and risk assessment of heavy metals in Arizona fruits and vegetables
- Quality and Microbial Risk Assessment of Iceberg and Romaine Lettuce as Influenced by Irrigation System
- Biocontamination Risk Reduction in Leafy Greens
- Evaluating New Repellants for Bird Management
- Food Safety for Youth in Yuma County
- Implementing an Arizona GHP/GAP Certification Training and Promotion Program
- Implementing an Arizona GHP/GAP Certification Cost-Share Program
- Preliminary Studies on Soil Accumulation, Potential Sources, and Soil Factors Affecting Cadmium Concentrations in Desert Durum Wheat
- Development of Durum Wheat Varieties with Low Cadmium
- Reducing Cadmium Accumulation in Durum Wheat grown in Arizona

As you can see, the Department, through its federally funded grant program (SCBGP), and several industry funded initiatives and industry funded councils have accomplished significant food safety awareness, education and research and will continue to do so as appropriate.

The Citrus, Fruit and Vegetable Standardization and the Fresh Produce Grade Inspections Program have changed direction and been involved for over two years in the training and performing of audits of Food Safety and Good Agricultural and Handling Practices. The USDA GHP/GAP Program has generated immense interest recently because of its value compared to other third party audit programs available. With the increase coming shortly in the number of auditors we have licensed, it will result in a rapid increase in the number of participants in Food Safety Audit Programs. The goal of the Arizona Department of Agriculture is to have industry wide participation. In some areas, such as the Arizona Leafy Greens Marketing Agreement, this is already happening.

The dairy, egg and meat and poultry programs have no statutory mandate in title 3 to enforce or promote food defense. The FDA does not require a food defense program with the cooperative Interstate Milk Shippers program, nor does it promote a voluntary program. Likewise, neither USDA-FSIS nor USDA-AMS require such a program. USDA-FSIS offers a strictly voluntary assessment, which is not required by federal law and which has been promoted by ADA staff.

It is desirable to promote food defense programs. However, ADA staff feel that food producers under its regulatory authority have generally done a good job in promoting food defense. Many firms have increased facility security and trained their employees to recognize threats to producing safe food products. ADA staff have participated in some of this training, most notably a table-top exercise with the dairy industry. This exercise provided a mock scenario which was unknown to the participants, who worked in teams to provide simulated response to the incident and public information. The regulated industries have also participated as “players” in drills such as TopOFF IV and as related to releases of radiation from the Palo Verde Nuclear Generating Station. Both of these drills have had terrorist elements written into the scenarios.

ADA has not expanded its work in food defense, because of serious budgetary constraints and the fact that it has no statutory authorization for this work. The agency has maintained its focus on its primary food safety mission, for which it does have federal and state regulatory authority. The animal food products programs have provided information and assistance to food producers and processors when requested.

Sunset Factor 6. The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction.

Under this sunset factor, the Auditor General stated that the Department should:

- Establish guidelines for when to involve the Office of Special Investigations in a complaint;
- Establish time frames for key steps in the complaint handling process, such as supervisory review; and
- As resources are available, modify the AIRS database and use it to periodically monitor its inspectors’ timeliness in responding to complaints and conducting investigations into alleged livestock neglect, abuse, and theft.

In compliance with the Joint Legislative Audit Committee procedures, the Department responds as follows:

Agency Response:

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

There is a close working relationship between the Animal Health and Welfare Officers in the Animal Services Division (ASD) and the Special Investigator in the Office of Special Investigations (OSI). Since the agency is relatively small with 13 Animal Health and Welfare Officers/Inspectors and 1 Special Investigator, cases have for the most part been completed flawlessly. ASD will develop guidelines relating to collaborating with OSI on complaints and investigations. These guidelines will help ensure consistency for current staff and will be an aid for new employees.

Time frames for case oversight will be established. Currently, statute lays out requirements as to how complaints will be completed relating to questionable ownership and animal seizure. This will include a schedule for review by supervisors.

Finally, as resources allow, the AIRS database will be updated to automate for responses to ensure case progression.

Sunset Factor 10. The extent to which the termination of the Department would significantly harm the public's health, safety or welfare.

The audit report states that if the Department were terminated, it would “likely” require others to assume the department’s functions.

To ensure safe food, limited pest pressures, quality non-food products and an open market, it is not “**likely**” that others would need to pick up the department functions, **it is a fact**.

Respectfully,

Donald Butler
Director

DB/lh

Performance Audit Division reports issued within the last 24 months

08-05	Arizona Biomedical Research Commission	09-09	Arizona Department of Juvenile Corrections—Suicide Prevention and Violence and Abuse Reduction Efforts
08-06	Board of Podiatry Examiners	09-10	Arizona Department of Juvenile Corrections—Sunset Factors
09-01	Department of Health Services, Division of Licensing Services—Healthcare and Child Care Facility Licensing Fees	09-11	Department of Health Services—Sunset Factors
09-02	Arizona Department of Juvenile Corrections—Rehabilitation and Community Re-entry Programs	10-01	Office of Pest Management—Restructuring
09-03	Maricopa County Special Health Care District	10-02	Department of Public Safety—Photo Enforcement Program
09-04	Arizona Sports and Tourism Authority	10-03	Arizona State Lottery Commission and Arizona State Lottery
09-05	State Compensation Fund	10-04	Department of Agriculture—Food Safety and Quality Assurance Inspection Programs
09-06	Gila County Transportation Excise Tax	10-05	Arizona Department of Housing
09-07	Department of Health Services, Division of Behavioral Health Services—Substance Abuse Treatment Programs	10-06	Board of Chiropractic Examiners
09-08	Arizona Department of Liquor Licenses and Control		

Future Performance Audit Division reports

Department of Corrections—Prison Population Growth