

# Arizona Department of Agriculture Key Regulatory Responsibilities

Three Department divisions did not inspect some higher-risk establishments and inefficiently used inspection resources, and Department licensed applicants who did not meet all licensing requirements and did not retain public records as required

Performance Audit

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A Report to the Arizona Legislature

Lindsey A. Perry  
Auditor General





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September 29, 2020

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Mark Killian, Director  
Arizona Department of Agriculture

Transmitted herewith is the Auditor General's report, *A Performance Audit of the Arizona Department of Agriculture—Key Regulatory Responsibilities*. This report is in response to a September 14, 2016, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Department of Agriculture agrees with all the findings and plans to implement all the recommendations directed to it.

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

Sincerely,

Lindsey Perry, CPA, CFE  
Auditor General

## Arizona Department of Agriculture Key Regulatory Responsibilities

**Three Department divisions did not inspect some higher-risk establishments and inefficiently used inspection resources, and Department licensed applicants who did not meet all licensing requirements and did not retain public records as required**

### Audit purpose

To determine if the Department's processes for inspecting regulated individuals, devices, and establishments; licensing applicants; and retaining public records related to its licensing and inspection functions are in accordance with State requirements and recommended practices.

### Key findings

- The Environmental Services Division, Pest Management Division, and Weights and Measures Services Division did not always prioritize higher-risk establishments and licensees—such as pest management applicators; establishments that sell seed, feed, fertilizer, and pesticides; gas station fueling devices; and small scales used by retail establishments that sell products by weight—for inspection and coordinate or plan their inspection activities, resulting in duplicated effort, unnecessary travel, and not efficiently using inspectors' time.
- The Department did not inspect nearly two-thirds of licensed airport scales and any licensed medical marijuana dispensary scales to ensure their accuracy during calendar years 2015 through 2019.
- The Department licensed 281 pest management qualified applicators who provide pest management services in homes, schools, and businesses without obtaining required criminal history background checks.
- The Department licensed 66 percent of the license applicants we reviewed, including industrial hemp license applicants, agricultural pesticide applicator license applicants, and service technicians who install and repair commercial scales, even though they did not meet all licensing requirements.
- The Department failed to retain public records related to its licensing and inspection functions.

### Key recommendations

The Department should:

- Require the regulatory divisions we reviewed to develop and implement risk-based, data-driven, and internally coordinated inspection approaches to help ensure higher-risk licensees and establishments are inspected and to help minimize duplicated effort and travel.
- Require the regulatory divisions we reviewed to establish inspection goals and performance metrics for division inspectors and regularly monitor inspectors' performance against the established goals and metrics.
- Inspect all airport scales by the end of fiscal year 2021 in line with its established goal and work with its Assistant Attorney General to help ensure it inspects licensed scales and packaged products sold by weight at medical marijuana dispensaries.
- License only those applicants who meet all licensing requirements.
- Comply with the State's public records laws, maintain necessary records to provide an accurate accounting of its licensing and inspection activities, and clearly communicate and provide training on records retention requirements and expectations to its staff.



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The Office of the Auditor General has released the second in a series of 3 performance audit reports of the Arizona Department of Agriculture (Department). The first report (Report 20-102) addressed the Department's State Agricultural Laboratory (Lab), including the Department's processes for tracking Lab costs and relocating the Lab to a privately owned facility in June 2019. This report addresses the Department's processes for inspecting regulated individuals, devices, and establishments in accordance with recommended practices and credible industry standards; licensing applicants in accordance with statutory and administrative rule requirements; and retaining public records related to its licensing and inspection functions in accordance with State laws and records retention requirements. A final report will provide responses to the statutory sunset factors.

## Department is responsible for regulating various professions and functions

The Department was established on January 1, 1991, to provide a uniform and coordinated agricultural program and policy in the State. Since its establishment, the scope of the Department's regulatory authority and responsibilities have expanded as previously separate State agencies have been merged as divisions within the Department. Specifically, in 2011, the supervision of the Arizona Office of Pest Management was transferred from the Arizona Department of Administration to the Department, and ultimately, in 2016, legislation consolidated this office as a division within the Department. Additionally, in 2015, the Arizona Department of Weights and Measures was consolidated as a division within the Department.

As shown in the textbox on page 2, 6 of the Department's divisions are responsible for fulfilling its key regulatory functions. To protect public health and consumer safety, the Department is responsible for (1) licensing various professions and functions; (2) inspecting food products, livestock, plants, the use of pesticides, and measuring devices across Arizona; and (3) investigating and resolving complaints against regulated professions and functions. The forthcoming Sunset Factors report will include information addressing the Department's complaint-handling processes.

## Department issues about 70 types of licenses, certifications, permits, and registrations

The Department issues approximately 70 different types of licenses, certifications, permits, and registrations, which authorize qualified individuals and businesses to conduct regulated activities consistent with statutory and rule requirements. According to the Department's fiscal year 2019 annual report, in that fiscal year there were approximately 22,000 licensed individuals and businesses. Some examples of the Department's various license and certification types are presented in Table 1 on page 2. For example, the Department licenses and certifies:

- Individuals and businesses that grow, harvest, process, and/or transport industrial hemp crops to help ensure licensees meet State and federal requirements for participating in the State's industrial hemp program (see textbox, page 3, for additional information).
- Individuals and businesses that provide pest management services in homes, schools, child care facilities, and at businesses to help ensure licensees can safely and properly provide pest management services in these locations and to vulnerable populations.

- Individuals and businesses that spray agricultural pesticides in fields and on golf courses to help ensure licensees can safely and properly use dangerous pesticides.
- Nurseries that require certification of their stock, such as trees, plants, and shrubs, prior to export to help protect agricultural products from plant pests and diseases.
- Individuals who install, service, test, or repair commercial devices—including scales and fueling devices—known as registered service representatives, and individuals who are hired to weigh objects or material for commercial purposes, known as public weighmasters, to help ensure licensees have the required knowledge and training to properly perform their duties.

**Table 1**  
**Example license and certification types and number of licenses and certifications issued**  
**Calendar year 2019**

License/certification type		Initial licenses/certifications issued by the Department
	Industrial hemp <sup>1</sup> :	
	• Grower	165
	• Nursery	43
	• Harvester	27
	• Transporter	54
	Pest management:	
	• Certified Applicator	1,491
	Agricultural:	
	• Commercial Pesticide Applicator	86
	• Private Pesticide Applicator	107
	• Golf Pesticide Applicator	30
	Nursery certifications	94
	• Registered Service Representative	49
	• Public Weighmaster	424

<sup>1</sup> The Department began issuing industrial hemp licenses in June 2019.

Source: Auditor General staff review of Department-provided licensing information.

## Department's 6 regulatory divisions and their responsibilities

**Animal Services Division**—Responsible for inspecting dairy, egg, meat, and poultry slaughter, production, processing, and distribution facilities to help ensure compliance with State and federal requirements. This division also is responsible for monitoring animal disease and overseeing the State's livestock program and the State veterinarian.

**Citrus, Fruit, and Vegetable Division**—Responsible for inspecting citrus, fruits, and vegetables produced for sale in the State for compliance with quality standards and certifying businesses to ship citrus, fruits, and vegetables out of State.

**Environmental Services Division**—Responsible for processing license applications for the majority of the Department's various licenses and certifications. This division is also responsible for inspecting the use of pesticides for agricultural purposes—including agricultural workers' protection and safety—and the sale of commercial feed, fertilizer, seeds, and pesticides.

**Pest Management Division**—Responsible for inspecting the use and storage of pesticides for nonagricultural pest management purposes, including public health pests, household pests, and wood-destroying insects.

**Plant Services Division**—Responsible for inspecting nurseries that import nursery stock, such as trees, plants, and shrubs; inspecting and certifying these products for export; and monitoring pests harmful to agriculture. As of May 31, 2019, this division is also responsible for administering the State's industrial hemp program (see the textbox on page 3 for additional information).

**Weights and Measures Services Division**—Responsible for inspecting devices that weigh, measure, dispense, and/or count commodities for accuracy, such as gasoline pumps and grocery/deli scales, and inspecting labels and scanners to verify that products scan for their advertised prices.

Source: Auditor General staff review of statutes, rules, and Department documents.

In addition, the Department licenses commercial devices used for weighing, measuring, metering, or counting. For example, the Department licenses small scales used in grocery stores and delicatessens that weigh produce and meat to help ensure these scales accurately weigh products sold to consumers. According to the Department's fiscal year 2019 annual report, in that fiscal year there were more than 127,000 licensed weighing and measuring devices across the State.

See Findings 3 and 4 (pages 16 through 22) for our findings and recommendations related to the Department's licensing processes for the license types we reviewed.

### Department's industrial hemp program started in June 2019

Laws 2018, Ch. 287, and subsequent legislation required the Department to establish the State's industrial hemp regulatory program, effective May 31, 2019. The legislation requires the Department to allow the growth, cultivation, and marketing of industrial hemp in the State while ensuring that crops' tetrahydrocannabinol (THC) concentration does not exceed statutory thresholds.

In June 2019, the Department began issuing 5 types of licenses for the industrial hemp program: grower, harvester, nursery, processor, and transporter.

Source: Auditor General staff review of Laws 2018, Ch. 287; Laws 2019, Ch. 5; Arizona Revised Statutes (A.R.S.) §3-311; and Arizona Administrative Code (AAC) R3-4-1003(A).

## Department inspects food, licensees, livestock, plants, and devices

The Department has authority to conduct approximately 61 different types of inspections of individuals, establishments, devices, food, and products to help ensure compliance with State and federal laws and protect public health and consumers. Although A.R.S. §3-102 establishes a centralized Office of Inspections within the Department, the Department has delegated inspection responsibilities to each of its divisions related to the various professions and functions the division regulates. Some examples of the Department's various inspection types are presented in Table 2. For example, the Department's:

- Pest Management Division (PMD) inspects licensees who apply pesticides to help ensure they safely and properly use dangerous pesticides, and inspects pest management business offices to review pesticide application records to help ensure that licensed and certified applicators use, store, and dispose of dangerous pesticides according to label requirements and in line with the U.S. Environmental Protection Agency's (EPA) federal pesticide regulations. As shown in Table 2, the Department's inspection records indicate that the Department completed more than 2,600 of these inspections in calendar year 2019.
- Environmental Services Division (ESD) conducts marketplace inspections at wholesale, distributor, and retail establishments that sell commercial seed, feed, fertilizer, and pesticide to review labels and/or obtain samples for testing to help protect consumers from purchasing unregistered, adulterated, recalled, expired, and/or misbranded products and ensure compliance with EPA requirements. As shown in Table 2, the Department completed 133 of these inspections in calendar year 2019.
- Weights and Measures Services Division (WMSD) inspects fueling devices and small scales for accuracy to help ensure consumers receive the amount of product for which they

**Table 2**  
**Example inspection types and number of inspections conducted**  
**Calendar year 2019**

	Inspection type	Inspections conducted by the Department
	Pest management:	
	• Use inspections	1,353
	• Nonuse inspections	1,284
	Marketplace inspection (seed, feed, fertilizer, and pesticide)	133
	• Fueling device inspection	783
	• Small scale inspections	555

Source: Auditor General staff review of Department records.

paid. As shown in Table 2, the Department inspected 783 fueling devices and 555 small scales in calendar year 2019.

See Findings 1 and 2, pages 5 through 15, for our findings and recommendations related to the Department's inspection processes.

## Staffing

As of January 2020, the Department had 285 filled positions and reported 186 vacancies, of which 142.25 were unfunded. Of these 285 filled positions, 182 performed regulatory functions. Specifically, the ESD—which is responsible for processing the majority of licensing applications for the Department's various types of licenses—had 11 filled licensing positions, and the Department had 171 filled inspector positions.<sup>1</sup> In addition to its filled positions, the Department reported that it hired 65 seasonal inspectors between March and April 2020 and expected to hire 12 more seasonal inspectors in December 2020 for the Citrus, Fruit, and Vegetable Division to inspect citrus, tomatoes, and grapes.

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<sup>1</sup> Some licenses are processed by the division that regulates the profession or function. For example, the Plant Services Division licenses participants in the State's industrial hemp program, and the Citrus, Fruit, and Vegetable Division issues produce shipper licenses. Staff in these divisions process licenses in conjunction with their other duties and responsibilities.



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

### Department regulatory divisions we reviewed have not conducted internally coordinated, risk-based inspections

As discussed in the Introduction, the Department has authority to conduct approximately 61 different types of inspections involving licensed individuals, establishments, and devices across Arizona. According to the Organisation of Economic Co-operation and Development (OECD), inspections are one of the most important ways to enforce regulations and ensure regulatory compliance to help protect public health, safety, and welfare.<sup>2</sup> Therefore, recommended practices and industry standards state that regulatory entities should adopt risk-based inspection approaches to prioritize inspections and maximize use of limited inspection resources. Additionally, the National State Auditors Association (NSAA) indicates it is important for entities to plan and coordinate inspections, including implementing and following regional assignments to help reduce travel and maximize use of inspection resources.<sup>3</sup> However, the 3 Department regulatory divisions we reviewed allowed division inspectors broad discretion to select licensees, establishments, and devices to inspect for compliance with State and federal laws and standards based on their last date of inspection, location, or the inspector's judgment, rather than planning and coordinating inspections based on data-driven risk factors—such as prior noncompliance and sales volume—and coordinating their inspection responsibilities.<sup>4</sup>

### Inspection approaches resulted in some higher-risk establishments and licensees not being inspected and inefficiently used inspection resources

**Some higher-risk establishments and licensees that pose a risk to the public were not prioritized for inspection**—The ESD is responsible for inspecting the use of pesticides for agricultural purposes; ensuring agricultural workers' safety from dangerous pesticides; inspecting pesticide producers' places of business; and

<sup>2</sup> Organisation for Economic Co-operation and Development (OECD). (2018). *OECD regulatory enforcement and inspections toolkit*. Paris, France: OECD Publishing. Retrieved 11/20/2019 from <https://www.oecd.org/gov/regulatory-policy/oecd-regulatory-enforcement-and-inspections-toolkit-9789264303959-en.htm>.

<sup>3</sup> National State Auditors Association (NSAA). (2004). *Carrying out a state regulatory program: A National State Auditors Association best practice document*. Lexington, KY. Retrieved 6/24/2020 from [https://www.nasact.org/files/News\\_and\\_Publications/White\\_Papers\\_Reports/NSAA%20Best%20Practices%20Documents/2004\\_Carrying\\_Out\\_a\\_State\\_Regulatory\\_Program.pdf](https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Carrying_Out_a_State_Regulatory_Program.pdf).

<sup>4</sup> We selected a judgmental sample of 6 inspection types from the approximately 61 inspection types the Department performs based on several factors, including whether the inspection is required by State law and/or a federal agency and whether the purpose of the inspection is to protect public health and/or consumer safety. For the WMSD, we reviewed the division's inspection and complaint databases for licensed fueling devices and small scales, and random samples of 10 of 614 small scale inspection reports and 10 of 203 large scale inspection reports completed in calendar year 2018. For the PMD, we reviewed random samples of 12 of 1,305 pest management application (use) inspection reports and 14 of 1,197 office and vehicle (nonuse) inspection reports completed in calendar year 2018 and observed 5 inspections between December 2018 and June 2019. For the ESD, we reviewed the Department's available inspection reports for the 112 marketplace inspections completed in calendar year 2018 and observed 1 marketplace inspection in September 2019.

inspecting retail establishments that sell seed, feed, fertilizer, and pesticide products to help protect consumers from purchasing recalled, expired, and misbranded products, also known as marketplace inspections. However, the division did not consistently focus marketplace inspections on establishments that pose a greater risk to public health and safety in line with U.S. EPA standards. EPA standards specify that a marketplace establishment's sales volume of pesticide products, product inventory, and history of prior violations should be considered when determining which establishments to inspect. However, 41 of 112 marketplace inspections division inspectors conducted during calendar year 2018 were at non-EPA-recommended establishments—dollar stores and convenience stores—and focused on reviewing feed labels, such as pet food and treats, to determine if these products were expired, instead of performing inspections of higher-risk establishments that sell seed, feed, fertilizer, and pesticide products. During calendar year 2018, division marketplace inspectors did not conduct any inspections at janitorial, swimming pool, hotel, and restaurant supplier establishments that sell pesticide-related products and are recommended for inspection by the EPA. For example, the ESD performed a marketplace inspection of a Phoenix dollar store focusing on pet food and treats, but did not inspect a pet supply store that sells feed or a pool supply company that sells chlorine and other pesticide products that were in the same area.

Further, although the ESD's annual report to the EPA indicated it exceeded some of its agreed-upon inspection goals, inspecting lower-risk marketplace establishments and not consistently focusing its inspections on higher-risk marketplace establishments may have contributed to the division not meeting 1 of its agreed-upon inspection goals. Specifically, the ESD reported to the EPA that it exceeded both its marketplace inspection and routine agricultural-pesticide-use inspection goals in federal fiscal years 2018 and 2019. However, it only inspected 13 of 30 and 24 of 30 pesticide producer establishments it committed to inspect in federal fiscal years 2018 and 2019, respectively.<sup>5</sup>

In addition, the PMD is responsible for regulating licensees who apply pesticides to help ensure they safely and properly use dangerous pesticides. This includes performing inspections to help ensure that licensed applicators use, store, and dispose of dangerous pesticides according to label requirements and in line with EPA regulations. Although the PMD performs inspections at licensed businesses that employ licensed pest management applicators, it has not regularly performed inspections of State, county, and city agencies and school districts that also employed licensed pest management applicators or included these entities in its inspection goals during fiscal years 2017 through 2019. According to PMD's inspection database, as of July 2019, it was responsible for regulating the pest management activities performed by 56 State, county, and city agencies and school districts that employed licensed pest management applicators, but only performed inspections at 3 of these entities during fiscal years 2017 through 2019.

**Inspectors' time was inefficiently used**—The Department invests substantial resources in its inspection activities. As of January 2020, the Department employed 171 inspectors, which comprised 60 percent of its total filled positions with an annual salary cost of approximately \$6.3 million.<sup>6</sup> However, absent planned and coordinated division inspection approaches, the Department had not ensured that its divisions effectively used inspector time and other Department resources to perform their inspection responsibilities and protect the public. Specifically:

- **PMD's inspection approach used inspectors' time inefficiently**—The PMD's inspection approach required inspectors to perform inspection duties in a way that inefficiently used their time. In addition, division inspectors had been assigned some responsibilities that were not inspection related and therefore did not help ensure that pest management businesses applied pesticides safely. Specifically:
  - According to division leadership and the inspectors we observed, the division's 7 inspectors were expected to drive around their assigned geographic areas and could do so for up to 2 hours per day between scheduled inspections to look for unlicensed pesticide management activity and/or an

<sup>5</sup> Pesticide producer establishments produce, package, and hold pesticide products or devices for distribution or sale.

<sup>6</sup> Reported salary cost assumes 171 inspectors were employed for the entire year. The employee-related expenditures (ERE) associated with these positions are estimated to be approximately \$2.7 million based on the Joint Legislative Budget Committee's (JLBC) fiscal year 2019 actual ERE costs as reported in the JLBC's fiscal year 2019 State appropriation report.

in-process pesticide application to inspect. However, during the 2 pest management inspections we observed where inspectors drove around to perform these activities, inspectors drove a total of 3 hours and did not identify any unlicensed activity or locate any in-process pesticide applications to inspect. In fact, the division's 7 inspectors identified only 10 instances of unlicensed activity during calendar year 2018 by driving around or using other methods, such as reviewing online advertisements. Based on the direction that inspectors could spend up to 2 hours per day driving around looking for unlicensed activity or in-process pesticide applications, each of the Division's inspectors could potentially spend 500 hours annually on this activity.

- The division's inspectors were also expected to drive to schools and child care facilities to (1) inform them that statute allows only Department-certified and licensed pest management applicators to apply pesticides at these facilities and (2) inquire which pest management businesses these facilities used.<sup>7</sup> According to the Department's fiscal years 2018 and 2019 annual reports, inspectors made 144 and 184 of these visits to schools and child care facilities each year, respectively. However, the division could have performed these responsibilities more efficiently by email or phone, thereby allowing inspectors to perform inspections and meet their inspection goals instead of using their time and other Department resources to drive to and visit these locations.

These 2 activities likely contributed to the PMD not meeting its 2 inspection goals. Specifically, the division has a goal to perform 2 types of inspections—use and nonuse—of each licensed business every 2 to 3 years. However, our review of division records for fiscal years 2017 through 2019 found that the division had not conducted use inspections of 101 licensed businesses (9 percent) and nonuse inspections of 83 licensed businesses (7 percent) of the 1,134 licensed businesses included in the division's inspection database.

- **WMSD's inspection approach resulted in duplicated effort and inefficiently used inspectors' time—**

The WMSD is responsible for inspecting fueling devices and small scales at places such as grocery stores for accuracy to help ensure consumers receive the amount of product for which they paid. Further, these inspectors check the accuracy of posted prices and packaged food weights. However, division inspectors did not always coordinate their inspection activities or adequately plan their visits, resulting in the inefficient use of their time and multiple visits by multiple inspectors to the same locations. Further, division inspectors have been assigned an additional public protection duty to check for skimming devices at gas stations but have not maximized their time and always performed other required inspections during these same visits. Specifically:

- 2 of 10 randomly sampled small scale inspection reports we reviewed found that division inspectors did not coordinate their inspections and instead made multiple trips to the same establishments to conduct different types of inspections. For example, 3 division inspectors visited the same grocery store on 3 different days between November 2017 and August 2018 to conduct separate inspections of posted prices, packaged food, and scales, all of which could have been performed in a single visit.
- 1 of 10 randomly sampled small scale inspection reports we reviewed indicated that no inspection was performed despite the inspector driving to the establishment more than once. Specifically, the inspection report stated that an inspector visited the same establishment twice but did not conduct an inspection during either visit because the establishment was first closed and then no longer in business.
- Division inspectors performed 2,455 checks at gas stations in calendar year 2018 to look for potential credit card skimming devices (see textbox for definition). These checks comprised approximately one-third of the division's total

#### Credit card skimming devices

Credit card skimming devices are devices that copy and store credit card information that may be used for fraudulent purposes. These devices can be unlawfully installed at various point of sale systems, such as fueling device credit card readers and Automated Teller Machines (ATMs).

Source: Auditor General staff review of information from the Department's website, the National Association of Convenience Stores, and the Federal Trade Commission.

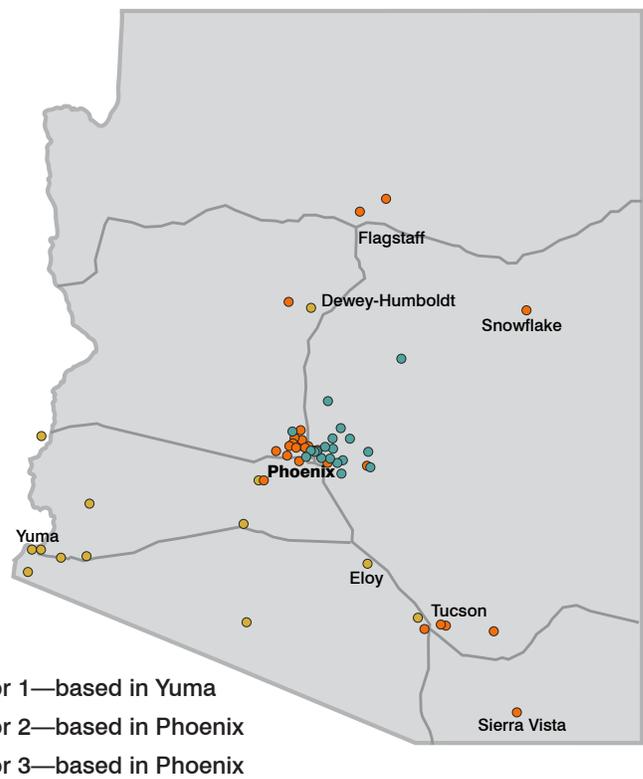
<sup>7</sup> Pursuant to A.R.S. §3-3606, only a certified pest management applicator may apply pesticides at a school or child care facility.

inspections that year and resulted in the identification of 104 potential skimming devices. However, for approximately 43 percent of these checks, inspectors did not perform other required inspection activities during the same visit, such as testing the quantity and quality of fuel dispensed or posted prices. In fact, 1 inspector returned to the same gas station on 7 separate occasions between May 2016 and August 2019 to check for skimming devices, and not only did this inspector not identify any skimming devices during these checks, the inspector also did not perform any of the other required inspections at the gas station. During the audit and according to a division official, as of January 2020, inspectors were directed to perform other required inspections when conducting skimmer checks.

Similar to the PMD, the WMSD’s inspection approach likely contributed to it not meeting its 2 inspection goals. Specifically, the division has established goals to inspect every 3 years (1) all establishments with licensed fueling devices and (2) large retailers with licensed small scales. Between calendar years 2016 and 2018, the division inspected 1,943 of 2,262 (86 percent) gas stations across the State with licensed fueling devices and 1,639 of 3,679 (45 percent) of all retailers with licensed small scales. Further, although the division reported focusing its inspection efforts on large retailers, it had not documented which retailers it considered to be “large” and should be included as part of its inspection goal. However, our review of the 535 large retail establishments we judgmentally selected found the division had not inspected all these large retail establishments.<sup>8</sup> Specifically, the division inspected 464 (87 percent) of these retail establishments during this time period, some of which were inspected more than once.

- ESD’s inspection approach resulted in unnecessary travel and inefficiently used inspectors’ time**—The ESD’s uncoordinated inspection approach has resulted in unnecessary travel and, as previously described, contributed to the division not meeting its other inspection responsibilities. Figure 1 shows the location of marketplace inspections performed by each of the 3 division inspectors in calendar year 2018. As shown in the figure, although Inspector 3 (based in Phoenix) generally conducted inspections within the Phoenix metropolitan-area, Inspector 1 (based in Yuma) and Inspector 2 (based in Phoenix) both inspected establishments around the State. For example, both Inspectors 1 and 2 traveled to Tucson to conduct inspections, and Inspector 1 conducted inspections in Buckeye, Dewey-Humboldt, and Eloy even though the other 2 inspectors were closer to these areas. Further, similar to examples of inefficient uses of inspectors’ time in other divisions, inspectors 2 and 3 conducted inspections at establishments that were next door to each other on the same day.

**Figure 1**  
**Marketplace inspections performed by 3 inspectors**  
**Calendar year 2018**



Source: Auditor General staff review of Department inspection records.

<sup>8</sup> The WMSD’s inspection database indicated that the number of licensed scales at retail establishments across the State ranged from 1 to 86, with an average number of 6 licensed scales per each retail establishment. Based on Department staff’s description of “large” retailers as grocery stores, we judgmentally selected establishments that had 15 or more licensed scales, such as wholesale clubs and grocery stores, to perform our analysis.

Additionally, in 1 instance, a Phoenix-based inspector spent approximately 14 hours over 3 days driving approximately 830 miles between Phoenix, Douglas, and Tucson to conduct a pesticide producer establishment inspection in Douglas but was unable to conduct the inspection because the establishment was closed. This unsuccessful inspection attempt involved 2 overnight stays in a Tucson hotel because the inspector made a second trip from Tucson to Douglas, even though the inspector had been notified that the establishment was closed, and cost approximately \$700 in travel reimbursements, salary, and the 2 unnecessary overnight hotel stays. According to the Department, the inspector performed some marketplace inspections during this trip, and the inspector's second trip to Douglas was necessary because the inspector did not appropriately document the inspection attempt during the first trip.

**Inspectors traveled substantial amounts to perform duties**—The 3 divisions' uncoordinated inspection activities contributed to the approximately 2.4 million miles that Department staff, including inspectors, supervisors, and administrative staff, assigned to the Department's 6 regulatory divisions drove between October 2018 and September 2019, according to State vehicle records. According to ADOT fleet records, these miles represented the most driven by any State agency within the State vehicle fleet during this time period. Although this mileage does not apply exclusively to inspection activities, it indicates the Department's substantial use of State vehicle fleet resources compared to other State agencies within the State vehicle fleet. See Figure 2 for a comparison of the 3 State agencies with the most miles driven. Further, State accounting records indicated that for fiscal year 2019, the Department spent approximately \$1.2 million on State fleet-related expenditures, which, based on the Department invoices we reviewed, included vehicle fuel, monthly lease, and maintenance costs.

**Figure 2**  
**State agencies with the highest fleet mileage**  
**October 2018 to September 2019**



Source: Auditor General staff review of Arizona Department of Transportation (ADOT) State vehicle fleet records.

## Department's regulatory divisions and inspectors operated independently with limited central oversight and accountability, contrary to recommended practices

Department management is responsible for establishing and maintaining mechanisms that provide reasonable assurance that Department operations—including inspection duties—are efficient and effective and fulfill their intended purposes. The Department has delegated inspection responsibilities to each of its regulatory divisions, and Department leadership has permitted the divisions to operate autonomously and establish their own inspection processes because Department leadership trusted the division directors to oversee their divisions' regulatory responsibilities. However, although Department leadership reported it has limited inspection resources, it has not required its divisions to implement internally coordinated, risk-based approaches helping to ensure that the Department focuses its limited resources on higher-risk licensees, or centrally monitored its divisions' inspection activities, plans, goals, and expectations. Specifically:

- Department regulatory divisions have not established risk-based inspection approaches based on identified risk factors that included risk-based goals for all inspection types and processes for reporting inspection activity to Department management**—Recommended practices and industry standards suggest a variety of risk factors that regulatory entities can use to prioritize inspections and maximize use of inspection resources (see textbox on page 10). Additionally, these practices and standards indicate that risk factors should be regularly reviewed to ensure that new information or changing circumstances are incorporated. A risk-based inspection approach should also include a small number of unscheduled or random inspections as a deterrence mechanism to the regulated community.

In developing and implementing a risk-based inspection approach that targets inspections on higher-risk licensees or establishments, the OECD also recommends that regulatory entities establish high-level goals or priority areas that are measured with specific performance indicators to determine the extent to which inspection goals are achieved.<sup>9</sup> As previously described, the Department divisions we reviewed have established some inspection goals. However, these goals do not ensure that all licensees, establishments, and devices are prioritized for inspection based on risk; and do not include a small number of random inspections as a deterrence mechanism. Further, the divisions we reviewed have not established clearly defined goals for all inspection activities or processes for reporting inspection activities and results to Department management. As a result, Department management does not have the information it needs to centrally monitor each division's inspection activity; hold its divisions accountable against established expectations, inspection goals, and performance metrics; and identify opportunities to coordinate the use of inspection resources across its divisions.

### Examples of risk factors for prioritizing inspections

- Population served. All businesses and consumers in metropolitan and sparsely populated areas need and benefit from regular inspections.
- Vulnerability of the population served.
- Public health, safety, and/or environmental impact.
- Previous noncompliance or violations.
- Cost of the product is relatively expensive or the volume of the product sold is of great economic value to the geographic area.
- Number, frequency, and scope of consumer complaints.

Source: Auditor General staff review of risk factors identified by OECD, 2018, and NIST, 2017.

- **Regulatory divisions we reviewed have not established performance goals and expectations for inspectors and assessed inspectors against these goals and expectations**—Regulatory entities should also establish performance expectations for inspectors and supervise inspectors' progress toward meeting those expectations. According to the National Institute of Standards and Technology (NIST), regulatory entities should evaluate inspector performance to help ensure accountability toward meeting inspection goals, including assessing inspectors' time spent conducting inspections against other activities, including travel.<sup>10</sup> Additionally, NIST indicates that weights and measures regulatory program directors have reported that implementing work/inspection itineraries has increased the efficiency and productivity of inspectors. However, the 3 regulatory divisions we reviewed have not established performance expectations or individualized inspection goals for its inspectors and consequently, did not have the information needed to regularly measure or assess inspectors against individual inspection goals or performance expectations. Additionally, inspection supervisors had not consistently monitored the number of inspections that inspectors completed on a daily or weekly basis or reviewed whether inspectors' time spent traveling compared to time spent performing inspections was an effective and appropriate use of Department resources.
- **Regulatory divisions we reviewed lacked critical information about licensees and establishments subject to inspections**—According to OECD and NIST, implementing a coordinated, risk-based inspection approach requires the regulatory entity to gather and maintain comprehensive and accurate data about the regulated community, such as previous noncompliance and its severity, volume of transactions processed, and the number and frequency of customer complaints. This information should be shared across a regulatory entity's various functions to help facilitate coordination and information-sharing. However, the regulatory divisions we reviewed did not collect and maintain sufficient data regarding licensees and establishments subject to inspection and the results of prior inspections to plan and execute a risk-based, data-driven, coordinated inspection approach that prioritized inspection activities based on the overall risk to public health, safety, and welfare. For example, the PMD reported that because its licensee records are maintained by the Department's central licensing staff, it did not have access to this information without specifically requesting

<sup>9</sup> OECD, 2018.

<sup>10</sup> National Institute of Standards and Technology (NIST). (2017). *NIST handbook 155: Weights and measures program requirements: A handbook for the weights and measures administrator*. Gaithersburg, MD. Retrieved 3/17/2020 from <https://www.nist.gov/publications/weights-and-measures-program-requirements-handbook-weights-and-measures-administrator-0>.

it and did not know the total population of licensees subject to inspection. In addition, the ESD has not attempted to identify all the potential establishments subject to marketplace inspections and instead relies on inspectors identifying and inspecting establishments as they are in the field, which results in inspectors selecting establishments based on location instead of risk-based factors such as volume of transactions processed, previous noncompliance, and number of complaints.

### **Recommendations:**

The Department should:

1. Require the ESD, PMD, and WMSD to develop and implement risk-based, data-driven, and internally coordinated inspection approaches to help ensure higher-risk licensees and establishments are inspected and to help minimize duplicated effort and travel.
2. Require the ESD, PMD, and WMSD to identify and document the risk factors they will use to inform their risk-based inspection approaches and establish a process to periodically reassess these risk factors based on new information or changing circumstances.
3. Require the ESD, PMD, and WMSD to collect, maintain, and review sufficient data regarding licensees, devices, and establishments subject to inspection and the results of prior inspections to help plan and execute risk-based, data-driven, and internally coordinated inspection approaches.
4. Require the ESD, PMD, and WMSD to establish inspection goals and performance metrics for division inspectors, such as the number of inspections that inspectors should complete on a daily or weekly basis and time spent traveling versus performing inspections.
5. Develop and implement policies and procedures for regularly assessing and monitoring inspector performance against the established goals and performance metrics and reporting information about the divisions' inspection activities, goals, and performance metrics to Department management.
6. Centrally monitor division inspection activity and results and hold its divisions accountable against established expectations, inspection goals, and performance metrics.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.



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

### Statute requires Department to license and inspect commercial scales

Statute requires the Department to license commercial devices that are used to determine how much a product should cost based on its weight, and inspect and respond to complaints related to any such commercial devices. To obtain a commercial scale license, the scale owner must submit to the Department a complete application form, proof that the scale is certified for use, and the applicable licensing fee.<sup>11</sup> Statute does not require the Department to inspect the scale prior to licensing. Further, statute does not specify when or how frequently the Department should inspect commercial scales. However, recommended practices and industry standards recommend that regulatory authorities establish risk-based, data-driven inspection programs.<sup>12</sup> Specifically, these practices and standards indicate that inspections should be frequent enough to provide reasonable safeguards to the public. Further, they indicate that regulatory agencies should assess compliance for all regulated businesses and establishments—even those with good compliance records—to comprehensively monitor compliance and deter noncompliance. Finally, industry standards state that inspections and enforcement activities should be fair and equally applied to all companies in the same segment of the commercial measurement system, such as those that use commercial scales licensed by the Department.

### Issue 1: Department did not inspect nearly two-thirds of licensed airport scales during 5-year period we reviewed

#### Department did not inspect majority of licensed airport scales during calendar years 2015 through 2019

As of January 2019, 9 of Arizona's commercial airports had 301 Department-licensed passenger baggage, shipping, and/or postal scales. During calendar years 2015 through 2019, the Department made 10 inspection

<sup>11</sup> A scale owner has 30 days to obtain a license after placing the commercial scale in operation. Commercial scale licenses are valid for a period of 1 to 3 years and may be renewed for a period of 1 to 3 years.

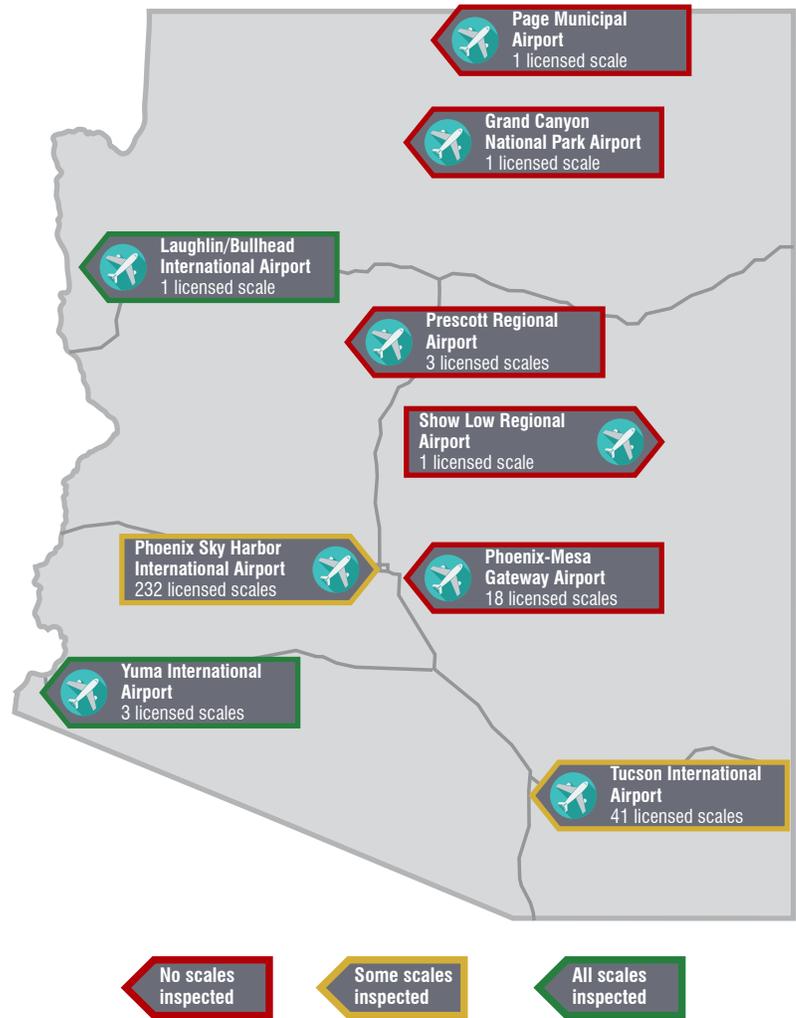
<sup>12</sup> Organisation for Economic Co-operation and Development (OECD). (2018). *OECD regulatory enforcement and inspections toolkit*. Paris, France: OECD Publishing. Retrieved 11/20/2019 from <https://www.oecd.org/gov/regulatory-policy/oecd-regulatory-enforcement-and-inspections-toolkit-9789264303959-en.htm>; OECD. (2014). *Regulatory enforcement and inspections, OECD best practice principles for regulatory policy*. Paris, France: OECD Publishing. Retrieved 7/2/2020 from <https://www.oecd-ilibrary.org/docserver/9789264208117-en.pdf?expires=1597164780&id=id&accname=guest&checksum=D8090B62BE02B0BB33AF9DE6AC54F854>. National State Auditors Association (NSAA). (2004). *Carrying out a state regulatory program: A National State Auditors Association best practice document*. Lexington, KY. Retrieved 6/24/2020 from [https://www.nasact.org/files/News\\_and\\_Publications/White\\_Papers\\_Reports/NSAA%20Best%20Practices%20Documents/2004\\_Carrying\\_Out\\_a\\_State\\_Regulatory\\_Program.pdf](https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Carrying_Out_a_State_Regulatory_Program.pdf). National Institute of Standards and Technology (NIST). (2017). *NIST handbook 155: Weights and measures program requirements: A handbook for the weights and measures administrator*. Gaithersburg, MD. Retrieved 3/17/2020 from <https://www.nist.gov/publications/weights-and-measures-program-requirements-handbook-weights-and-measures-administrator-0>.

trips to 4 of these airports and inspected a total 107 licensed scales. However, as shown in Figure 3, the Department did not perform any inspections at 5 airports located in the State, including the Phoenix-Mesa Gateway and Prescott Regional Airports, and did not inspect more than 190 licensed scales during this time. Additionally, the Department made 6 of the 10 inspection trips in response to complaints, not as part of a risk-based, data-driven inspection approach. The Department's 10 airport scale inspection trips identified inaccurate scales as well as scales with expired licenses. These inspection findings underscore the importance of the Department developing and implementing a risk-based, data-driven inspection approach for licensed scales at Arizona airports to protect consumers from inappropriate and excessive baggage fees and to ensure that scales have valid licenses. For example:

- In July 2019, the Department received a complaint for a scale at Phoenix Sky Harbor International Airport alleging that the airline charged the individual \$100 in overweight bag fees based on a faulty scale reading. The Department's August 2019 complaint investigation substantiated the complaint, finding that the passenger baggage scale in question detrimentally read heavier than the actual weight tested. During that same trip, the Department inspected another 64 passenger baggage scales at the airport and found 16 additional scales with problems, including 5 that detrimentally read heavier than the actual weight tested.<sup>13</sup>

- A June 2018 complaint investigation found that an airline's 5 passenger baggage scales had not been inspected since October 2013 and that the airline's licenses for these scales had expired in July 2014. Although the investigation determined that the scales were accurate, statute prohibits any business or establishment from using an unlicensed scale for commercial purposes. Therefore, the Department placed an administrative stop-use order on the 5 scales until the airline obtained new licenses for the scales in September 2018. Had the Department been performing routine inspections of airport scales, it could have identified these unlicensed scales and returned them to compliance years earlier.

**Figure 3**  
**Inspections of licensed airport scales<sup>1</sup>**  
**Calendar years 2015 through 2019**



<sup>1</sup> The number of licensed scales is as of January 2019.  
 Source: Auditor General staff review of Department data.

<sup>13</sup> The remaining 11 scales did not meet established standards, such as the scale would not return to 0, and in 7 cases, weighed in favor of the consumer.

## Department staff reported prior Arizona Department of Weights and Measures Director decided to not use inspection resources to inspect airport scales

Department staff reported that in 2013, prior to the Arizona Department of Weights and Measures' consolidation as a division within the Department, a former Department of Weights and Measures Director instructed staff to not inspect passenger baggage, shipping, and/or postal scales at airports. The majority of scales used at airports are passenger baggage scales. According to Department staff, it was their understanding that airlines are required to calibrate their passenger baggage scales monthly, and if necessary, the Department could request and review these calibration reports instead of independently inspecting these airport scales. However, according to Department inspection records we reviewed, Department staff only requested these reports as part of 3 complaint investigations between calendar years 2015 through 2019 because Department staff reported inspecting airport scales was not a priority. Further, Department staff reported that the Department had not revisited this prior decision. As a result, the Department had not developed and monitored goals for inspecting licensed scales at each of the airports in the State or established a risk-based, data-driven approach for performing inspections. In contrast, 2 other states we contacted reported placing a higher priority on inspecting licensed scales at airports. Specifically, Idaho reported that it inspects licensed scales at airports annually as part of its routine scale inspection program. Further, Utah reported that it inspects licensed scales at airports annually to be responsive to consumers' concerns.

## During audit, Department reported it plans to begin inspecting licensed airport scales

Based on our inquiries and the results of its August 2019 complaint investigation, the Department reported that it plans to inspect airport scales at least once every 3 years. Specifically, the Department reported it directed WMSD inspectors to start including airport scales as part of their routine inspection work and, as of April 2020, had established a goal to inspect all airport scales by the end of fiscal year 2021.

### Recommendations

The Department should:

7. Inspect all airport scales by the end of fiscal year 2021 in line with its established goal.
8. Implement its planned airport scale inspection program, including defining how frequently Department-licensed scales should be inspected based on assigned risk, in conjunction with its efforts to improve its inspection approach as recommended in Recommendations 1-6 in Finding 1.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

## Issue 2: Department has not inspected licensed scales or packaged products sold by weight in medical marijuana dispensaries

During calendar years 2015 through 2019, the Department did not inspect any of the approximately 700 licensed scales that are used by the estimated 109 medical marijuana dispensaries located throughout Arizona.<sup>14</sup> Although the Department licensed these scales and is required by statute to inspect them, Department leadership reported that it does not believe the Department has the authority to enter medical marijuana dispensaries to perform

<sup>14</sup> According to A.R.S. §36-2810, information related to medical marijuana dispensaries is confidential, including physical addresses. Therefore, we estimated the number of licensed scales and the number of medical marijuana dispensaries using publicly available information and Department records.

inspections of licensed scales or of products packaged and sold by weight. However, the Department was unable to provide specific statutory authority that prohibits it from inspecting the medical marijuana dispensary scales it licenses. Additionally, A.R.S. §§3-3414 and 3-3415 requires that the Department shall enter any commercial, nonprofit business, or governmental premises during normal operating hours for the purposes of inspecting licensed commercial devices when necessary, such as when inspecting and testing weights and measures that are commercially used in determining the accuracy of the weight of the product for sale. Finally, industry standards indicate that if a scale is not accessible for inspection, it is the responsibility of the scale owner to provide a testing location and transport the scale and/or testing equipment, as necessary, to fulfill the inspection requirement.<sup>15</sup> The scales used in medical marijuana dispensaries are portable and could be inspected outside the dispensary, if needed.

The Department's action to license but not inspect medical marijuana dispensary scales could mislead consumers who may assume that the scales are accurate and functioning as expected. Specifically, statute requires commercial businesses to post Department-issued license(s) for scales, which would be viewable by consumers.<sup>16</sup> Further, the Department's website states, "**Big or small, we ensure that all commercial scales are accurate, suitable for use, properly installed, and legal for trade.**" However, it does not disclose that the Department does not inspect licensed scales at medical marijuana dispensaries. As a result, qualifying patients who use medical marijuana products may have a false sense of assurance that they receive the accurate amount of marijuana product for which they paid or conversely, that they did not receive more than the statutorily allowed limit.<sup>17</sup>

During calendar years 2015 through 2019, the Department received, but did not investigate, at least 11 complaints related to medical marijuana dispensary products sold by weight. All these complaints alleged that the consumer received less product than the amount for which they paid. The Department reported it did not investigate these complaints because it believes it lacks the authority to enter medical marijuana dispensaries. Instead, the Department reported that it referred complaints it received to the Arizona Department of Health Services (ADHS), which is responsible for regulating Arizona medical marijuana dispensaries. However, the Department stated it did not follow up with ADHS about the disposition or resolution of the referred complaints.

## Recommendations

The Department should work with its Assistant Attorney General to:

9. Ensure it inspects licensed scales and packaged products sold by weight at medical marijuana dispensaries, as required by State law by working with licensed scale owners and other stakeholders, as appropriate, to determine a process for inspecting these scales.
10. Develop and implement an inspection program for scales and products sold by weight at medical marijuana dispensaries, including defining how frequently Department-licensed scales should be inspected based on assigned risk, in conjunction with its efforts to improve its inspection approach as recommended in Recommendations 1-6 in Finding 1.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

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<sup>15</sup> NIST. (2019). *NIST handbook 44: Specifications, tolerances, and other technical requirements for weighing and measuring devices*. Gaithersburg, MD. Retrieved 8/18/2020 from <https://nvlpubs.nist.gov/nistpubs/hb/2020/NIST.HB.44-2020.pdf>.

<sup>16</sup> A.R.S. §3-3451.

<sup>17</sup> Statute allows qualifying medical marijuana patients to obtain 2.5 ounces of medical marijuana per 14-day period. Inaccurate medical marijuana dispensary scales may provide qualifying patients with less marijuana product than they paid for or more than statutorily allowed.



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

The Department’s issuance of licenses to qualified applicator license applicants without obtaining statutorily required fingerprint-based criminal history background checks and lack of authority to obtain criminal history background checks for certified applicators put public safety at risk (see textbox for definitions of these 2 license types).

### Issue 1: Department issued licenses to qualified applicator license applicants without obtaining fingerprint-based criminal history background checks for nearly 2 years

Although required to do so by statute, the Department did not obtain criminal history background checks of the 362 applicants for qualified applicator licenses who applied between August 2017 and May 23, 2019, and inappropriately licensed 281, or 78 percent, of them.<sup>18</sup> To help protect the public, Laws 2017, Ch. 173, effective August 2017, reinstated a previously eliminated statutory requirement that initial applicants for a qualified applicator license submit a set of fingerprints to the Department for the purpose of obtaining a criminal history background check prior to becoming licensed. By not obtaining and reviewing the results of criminal history background checks for these 281 applicants, the Department did not reasonably ensure that they were able to safely provide pest management services in people’s homes and at schools and businesses.

Department staff reported they had not developed a criminal history background check process for qualified applicator license applicants because they

**Certified applicators** provide pest management services in various locations, including homes, businesses, schools, and healthcare facilities.

**Qualified applicators** have experience as a certified applicator and, in addition to providing pest management services, may register with the Department as the individual responsible for ensuring the proper training, equipping, and supervising of all applicators employed by a pest management business or school district.

Source: Auditor General staff review of A.R.S. §3-3601, AAC R3-8-201, and AAC R3-8-204.

Department inappropriately issued 281 licenses without conducting criminal history background checks



<sup>18</sup>The remaining 81 applicants were not licensed for various reasons, including not taking the required examination.

did not know how to assess the results of background checks and then take appropriate action. In June 2019, 1 month after we informed the Department of its noncompliance with the statutory requirement, the Department began collecting applicants' fingerprints and submitting them to the Arizona Department of Public Safety to obtain criminal history background checks. As of August 2020, the Department had issued 48 qualified applicator licenses—after collecting fingerprints and obtaining and reviewing the results of a criminal history background check—for 66 applicants who applied between May 24, 2019, and October 21, 2019. According to Department staff, the Department denied a license to 1 of these 66 applicants based on the Department's review of the results of the criminal history background check.<sup>19</sup> The Department's licensing database indicated that the remaining 17 applications were still in process for various reasons, including that applicants had yet to take and/or pass the required examination.<sup>20</sup> Department staff reported consulting with its Assistant Attorney General representative, as necessary, to review the results of criminal history background checks.

Further, the Department inappropriately obtained criminal history background checks for 3 individuals during this same time frame. Specifically, in July and August 2019, the Department obtained this information for 1 applicant applying for renewal of a qualified applicator license and 1 applicant applying for renewal of a certified applicator license. However, the Department does not have statutory authority to obtain a criminal history background check for renewal of a qualified applicator license or for initial or renewal certified applicator licenses (see page 18 for more information on background checks for certified applicator license applicants). Additionally, in September 2019, an individual submitted fingerprints to the Department, following which the Department obtained the results of a criminal history background check for this individual. However, this individual had yet to complete and submit a qualified applicator license application. Therefore, because the Department had not received a completed application, it was not authorized to obtain the results of a criminal history background check. According to a Department official, the Department did not become aware that it had incorrectly processed these individuals' fingerprints until after it had received the results of the criminal history background checks.

## Recommendations

The Department should:

11. Continue to obtain criminal history background checks for all applicants for an initial qualified applicator license.
12. Work with its Assistant Attorney General to determine what action the Department should take regarding the qualified applicator licenses it has issued since August 2017 without obtaining required fingerprint-based criminal history background checks and then take action accordingly.
13. Develop and implement a process for obtaining and reviewing the results of criminal history background checks for only those license applicants the Department has statutory authority to obtain this information.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

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<sup>19</sup> AAC R3-8-204 states that a qualified applicator must be of good moral character and provides 3 offenses that would indicate a lack of good moral character: murder involving the death of a law enforcement officer, an offense related to terrorism, or a sexual offense where the victim is a minor. Rule also indicates that a conviction involving moral turpitude may demonstrate lack of good moral character.

<sup>20</sup> AAC R3-8-204 states the once the Department notifies a qualified applicator license applicant that the applicant is eligible for a license, the applicant may schedule and take the required examination. AAC R3-8-211 permits an applicant to retake the examination twice in a 6-month period, and the examination score is valid for 12 months from the examination date. The licensing time frames prescribed in rule allow an initial qualified applicator license applicant up to 360 days to provide information to the Department, such as examination results, once the Department requests such information.

## Issue 2: Department does not have statutory authority to obtain criminal history background checks of certified applicator license applicants

Although the Department issues many more licenses to certified applicators than qualified applicators (see Table 1 on page 2), and they are more likely to perform pest management services in and around homes, schools, and businesses than qualified applicators, the Department lacks statutory authority to obtain criminal history background checks of them. Further, certified applicator license applicants are not required to self-disclose whether they have been convicted of a misdemeanor or felony. Rather administrative rule only requires that certified applicator license applicants self-disclose whether they have ever had a license or permit to practice pest management denied, revoked, or suspended and, if so, to explain the circumstances. Additionally, although administrative rule requires certified applicator license applicants to be of good moral character, stating that a conviction for a felony or misdemeanor involving moral turpitude may demonstrate a lack of good moral character, administrative rule does not authorize the Department to require certified applicator license applicants to self-disclose and attest to whether they have been convicted of a misdemeanor or felony.<sup>21</sup> Other State regulatory agencies' administrative rules, such as the Arizona State Board of Dispensing Opticians and the Arizona Regulatory Board of Physician Assistants, require license applicants to self-disclose and attest to whether they have been convicted of a felony or misdemeanor involving moral turpitude.

Prior to statutory changes enacted in 2013 as part of the State's restructuring of the Office of Pest Management, the Department had the authority to require certified applicator license applicants to submit a full set of fingerprints to obtain a criminal background check.<sup>22</sup> Several statutory changes—including eliminating the Department's authority to obtain criminal history background check information for certified applicator applicants—were based on the Task Force on Regulation of Structural Pest Management's recommendations.<sup>23</sup> According to Department staff, reinstating the Department's authority to obtain criminal history background checks for applicants seeking a certified applicator license is reasonable and would help to protect the public. By not reinstating this authority or revising the Department's rules to require certified applicator license applicants to self-disclose whether they have been convicted of a misdemeanor or felony, the Department cannot ensure that certified applicator license applicants meet the good moral character requirement.

Our review of peer agencies in California, Idaho, Nevada, and Utah found that 2 of these 4 states require fingerprint-based criminal history background checks for some or all initial applicants for a pest management applicator license. Specifically, California requires a fingerprint-based criminal history background check for all initial applicants, and Nevada requires this check for initial primary principal applicants, which is similar to Arizona's qualified applicator license. The remaining 2 states do not require a fingerprint-based criminal history background check for any license applicants.

### Recommendations

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

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<sup>21</sup> AAC R3-8-203. In accordance with its statutory authority to adopt rules for pest management applicator licensure and certification, the Department has adopted rules further stipulating the requirements and qualifications certified applicator license applicants must meet.

<sup>22</sup> In 2008, the Legislature established the Office of Pest Management in the Arizona Department of Administration. Laws 2011, Ch. 20, changed the Office of Pest Management's supervision from the Arizona Department of Administration to the Department, through December 31, 2013. This legislation also established a 9-member, Department-appointed task force to review the laws and regulations governing structural pest management in the State and recommend statutory changes needed to accomplish the future structural pest management program. According to Department rule-making documents, the task force's recommended statutory and rule changes were, in part, intended to reduce the burden on the regulated community while protecting the public. Laws 2013, Ch. 125, continued this supervision indefinitely and eliminated the Department's authority to obtain criminal history background checks for certified applicator applicants.

<sup>23</sup> Statute was also amended to eliminate the Department's authority to obtain criminal history background check information for qualified applicator license applicants. However, as discussed on page 16, Laws 2017, Ch. 173, reinstated the Department's authority to obtain this information for initial qualified applicator license applicants only.

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

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendation directed to it.



## Department licensed 66 percent of applicants we reviewed although they did not meet all license requirements

### Department licensed applicants we reviewed without ensuring they met all license requirements

Statute and rule prescribe the requirements license applicants must meet prior to being licensed by the Department, such as passing a written examination or demonstrating prior professional experience (see textbox for additional information). However, as shown in Table 3 on page 21, our review of 115 license applications sampled from 13 types of licenses the Department issues found that it licensed 76 applicants, or 66 percent of applicants we reviewed, without ensuring they met all statutory and rule requirements.<sup>24,25</sup> For example:

- **Department licensed 9 applicants who did not submit documentation demonstrating they met examination or training requirements or did not provide required industrial hemp information**—The Department licensed 6 of 85 applicants we reviewed, including 1 government employee, despite their applications not including proof that they met required examination or training requirements. This information helps provide assurance that the applicant can safely perform the duties for which he/she is seeking a license.

#### Depending on the license type, the following requirements may apply:

- Submit fingerprints for a criminal history background check or a valid fingerprint clearance card.
- Demonstrate or attest knowledge, prior training, and/or experience regarding the laws, rules, standards, and equipment necessary to perform job duties.
- Pass the written core examination.
- Demonstrate lawful presence in the U.S.
- Pay applicable licensing fee.

Source: Auditor General staff review of A.R.S. Title 3; AAC Title 3; and A.R.S. §41-1080.

Additionally, the Department licensed 3 industrial hemp applicants even though the applications lacked required maps or GPS coordinates for locations storing, harvesting, and/or transporting industrial hemp. The 2018 federal legislation that permitted states to implement industrial hemp programs cited the importance of maps and GPS coordinates for accurate hemp crop location identification and accurate acreage information to comply with federal hemp production information-sharing requirements. In addition, A.R.S. §3-316 authorizes the Department to inspect hemp fields, thereby ensuring compliance with provisions of State and

<sup>24</sup> We selected a random sample of 115 initial and renewal license applications to review from a judgmentally selected sample of 13 license types from the approximately 70 license, certification, permit, and registration types the Department issues. Specifically, we reviewed the following license applications the Department received in calendar year 2018: 18 of 1,934 initial and 15 of 6,917 renewal certified and qualified pest management applicator license applications; 13 of 51 initial registered service representative license applications (individuals who are licensed to install, service, test, or repair commercial devices, such as small scales and fueling devices); 9 of 20 initial public weighmaster license applications (individuals who are hired to weigh objects or material for commercial purposes); 15 of 203 initial and 15 of 797 renewal agricultural pesticide applicator license applications; and 5 of 111 nursery license applications. We also reviewed 25 of 304 initial industrial hemp license applications the Department received between June 5, 2019 and August 20, 2019.

<sup>25</sup> We determined that the Department's decision to not license 3 applicants was appropriate because the applicants did not pass the required examination.

federal law. Without complete and accurate location information, the Department risks not having an accurate count of licensees and sites subject to inspection.

**Table 3**  
**Statutory and rule licensing requirements and number of applicants who did not meet applicable requirements for the applications we reviewed**  
**Calendar year 2018<sup>1</sup>**

License type and fee amount (Population reviewed)	Fingerprint-based criminal background checks  Applicable Population: 28	Qualified (exam or experience)  Applicable Population: 85	Proof of lawful presence  Applicable Population: 110	Paid fee  Applicable Population: 115	Completed application  Applicable Population: 115	Age 18 or older  Applicable Population: 49
Pest management applicators (33): • Certified \$75 • Qualified \$100	✗ 3 did not submit	✓	✗ 11 did not submit	✓	✓	✓
Registered service representative (13): • \$4.80	Not applicable	✗ 4 left experience and training section blank	✗ 1 did not submit	✗ 13 unable to determine if paid	✗ 6 incomplete forms	Not applicable
Weighmaster (9): • \$48	Not applicable	✓	✗ 1 did not submit	✗ 9 unable to determine if paid	✗ 6 incomplete or missing forms	✓
Agricultural pesticide applicators (30): • Commercial \$50 • Golf \$100 • Private \$50	Not applicable	✗ 2 lacked proof of passing exam	✗ 16 did not submit	✗ Inappropriately waived fees for 4 applicants	✗ 5 incomplete forms	Not applicable
Nurseries (5): • \$250	Not applicable	Not applicable	Not applicable	✓	✓	Not applicable
Industrial hemp (25): • Grower \$1,500 • Harvester \$150 • Nursery \$1,000 • Processor \$3,000 • Transporter \$150	✓	Not applicable	✗ Documentation not included in 25 files	✗ 1 applicant was not charged \$1,000 for nursery license	✗ 4 incomplete applications—3 lacked maps or GPS coordinates; 1 missing the applicant's social security number	✗ Documentation not included in 21 files
<b>Total issues</b>	<b>3 of 28</b>	<b>6 of 85</b>	<b>54 of 110</b>	<b>27 of 115</b>	<b>21 of 115</b>	<b>21 of 49</b>

<sup>1</sup> The Department began issuing industrial hemp licenses in June 2019.

Source: Auditor General staff analysis of statutes, rules, and a sample of 115 Department license applications.

- **Department did not collect required license fees from 5 applicants and did not document if 22 applicants paid required licensing fees**—Although all of the license types we reviewed required applicants to pay a licensing fee, the Department did not collect required fees in 5 instances and did not document whether 22 applicants paid required fees. Specifically, the Department inappropriately waived licensing fees for 4 of these 5 applicants who were government employees and did not collect a \$1,000 industrial hemp licensing fee because of an administrative error. Department staff decided not to retroactively bill this licensee because it was the Department's error.

Further, the Department did not have documentation to show that the 22 registered service representative and weighmaster license applicants we reviewed paid required licensing fees. The Department explained

that typically, licensing fees for these applicants are paid by the applicant's employer. The Department bills applicants' employers and retains the payment records. However, these records do not indicate which applicants or licenses the payments apply to, and the Department does not reconcile payments it receives to the license applications to ensure that all applicants' licensing fees are paid.

## Lack of comprehensive licensing processes and misunderstanding of Department's authority contributed to the Department not ensuring applicants met all licensing requirements

The following 2 factors contributed to the Department issuing licenses to applicants who did not meet all statutory or rule licensing requirements:

- The Department has not established comprehensive licensing policies, procedures, and checklists, and a supervisory review process to help ensure that staff appropriately review applications for completeness, follow up to obtain missing information, collect all required fees, and appropriately issue or deny licenses.
- Department staff reported misunderstanding the Department's authority to waive examination and licensing fee requirements for specific government employee license applicants. For example, Department staff reported that they thought government employee license applicants were exempt from licensing fee and examination requirements under the terms of the Department's intergovernmental agreement with the applicants' employers.<sup>26</sup> However, this understanding is inaccurate.

### Recommendations

The Department should:

16. Issue licenses to only those applicants who meet all licensing requirements.
17. Work with its Assistant Attorney General to determine what, if any, actions the Department should take regarding the licenses it has issued to applicants who did not meet all requirements and then take these actions accordingly.
18. Develop and implement licensing policies, procedures, guidance, and/or checklists that specify the documentation applicants must submit and the Department should review and retain to help ensure license applications are complete and that applicants pay all required licensing fees, and train staff on these policies and procedures.
19. Develop and implement a risk-based supervisory review process using risk factors, such as whether new staff are processing license applications or there are statute or rule changes to licensing requirements, to help ensure that Department staff issue licenses only to applicants who meet all licensing requirements.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

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<sup>26</sup> Statute permits the Department to cooperate with other State and federal agencies to administer State and federal agriculture programs, and under these cooperative agreements, some government employee applicants are exempt from examination requirements. However, in the instances we reviewed, the government employee applicants were not exempt from the examination and licensing fee requirements.



## Department failed to retain public records, limiting transparency of official activities

### State public records laws require records to be maintained

State public records laws require the Department and its employees to maintain records that are reasonably necessary to provide an accurate accounting of their official activities.<sup>27,28</sup> Such records should also be open to the public for inspection, and the Department is required to secure, protect, and preserve public records from deterioration, mutilation, loss, or destruction according to retention schedules established by the Arizona State Library, Archives, and Public Records.

### Issue 1: Department did not retain industrial hemp program licensee information to avoid fulfilling public information requests

#### None of the 25 files we reviewed included all required licensing documentation

Our review of a random sample of 25 initial industrial hemp program license applications the Department received between June 5, 2019 and August 20, 2019, found that 21 application files did not include required documentation that the applicant was 18 years of age or older to be licensed, as required by rule.<sup>29,30</sup> Additionally, none of the 25 application files included required documentation that the applicants met the statutory requirement to demonstrate lawful presence in the U.S. Pursuant to its records retention schedule, the Department is required to maintain these licensing records for 3 years after the calendar year of the license's expiration, cancellation, or revocation. The Department's lack of licensing documentation limits public assurance that it issued licenses to applicants who met all State requirements (see textbox).

#### Key industrial hemp program licensing requirements

The Department began licensing applicants to grow, transport, and process industrial hemp in June 2019. Statute and rule require license applicants to:

- Submit a completed application.
- Be at least 18 years of age.
- Submit proof of a valid fingerprint clearance card.
- Be a U.S. citizen or legal resident alien.
- Pay the applicable fee.

Source: Auditor General staff review of A.R.S. §3-314; AAC R3-4-1002; AAC R3-4-1003; and AAC R3-4-1005.

<sup>27</sup> A.R.S. §§39-101 through 39-161.

<sup>28</sup> Arizona Attorney General. (2018). *Arizona agency handbook*. Phoenix, AZ. Retrieved 4/11/2019 from <https://www.azag.gov/outreach/publications/agency-handbook>.

<sup>29</sup> We selected a random sample of 25 of the 304 initial industrial hemp program license applications the Department received between June 5, 2019 and August 20, 2019.

<sup>30</sup> AAC R3-4-1002.

## Department did not retain licensing documentation to avoid having to provide information in response to public records requests

A Department manager reported that industrial hemp program staff were instructed to not retain the documentation for any of the initial industrial hemp license applications it processed between June 5, 2019 and September 2019 to avoid having to fulfill public information requests. Specifically, the Department manager reported that the Department receives many public records requests, and to comply with State public records laws, staff would have had to redact confidential information, such as social security numbers, when responding to the requests. Therefore, the Department determined it would be easier to not retain the information as opposed to needing to redact the information when fulfilling the public records requests. However, this practice is contrary to Arizona public records laws and prevents the Department and the public from being able to assess that applicants met licensing requirements. The Department should not intentionally destroy or dispose of such records to avoid fulfilling public records requests.

In March 2020, in response to our work, the Department updated its licensing and filing procedures to require its staff to maintain all industrial hemp program licensing records.

### Recommendations

The Department should:

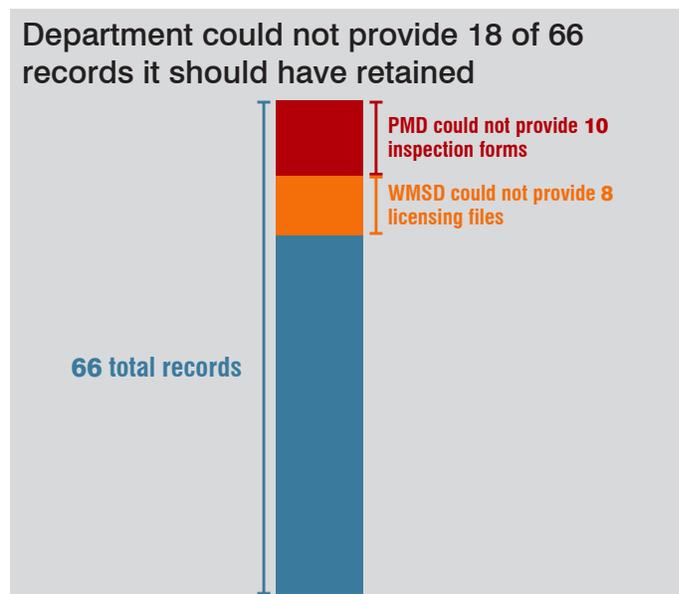
20. Comply with the State's public records laws and maintain documentation from initial industrial hemp applicants for all statutory license requirements to support its licensing decisions and allow it to fulfill public records requests.
21. Implement its revised industrial hemp program licensing and filing procedures.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

## Issue 2: Department did not retain some licensing and inspection records in line with 3-year retention schedule

### Department could not provide some licensing and inspection records from 2018

The Department could not locate, and therefore could not provide, 18 of 66 records we requested for the PMD's inspection activities and the WMSD's licensing activities that occurred in calendar year 2018, all of which it was required to retain for 3 years pursuant to its records retention schedule. Therefore, in these 18 instances, it is not possible to assess whether the Department fulfilled its regulatory responsibilities of licensing only qualified applicants and effectively inspecting regulated entities to help protect the public.



## Department management did not communicate records retention requirements to staff

WMSD and PMD staff reported the following reasons for not retaining required licensing and inspection records:

- WMSD licensing staff reported that they could not locate the requested licensing files because Department expectations for retaining records were not communicated to staff. They further reported that they had purged a number of licensing files that were older than 12 months because they did not see value in retaining such records for longer than 12 months.
- Although PMD inspectors reported they had provided the requested inspection forms to licensing staff to file, and licensing staff reported filing all received forms, the Department could not locate the requested inspection forms. After we notified Department leadership about this missing documentation in July 2019, the PMD Associate Director reported that the division had developed a new process to require inspectors and their supervisor to scan inspection forms and save them to a secured shared drive, in addition to retaining the original paper forms in the applicable licensed pest management business's file.

### Recommendations

The Department should:

22. Maintain records that are reasonably necessary to provide an accurate accounting of its licensing and inspection activities to license only qualified applicants and inspect regulated entities consistent with its records retention schedule and for the required time period.
23. Clearly communicate and provide training on records retention requirements and expectations to Department staff responsible for maintaining, filing, and retaining licensing and inspection records.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.



# SUMMARY OF RECOMMENDATIONS

## Auditor General makes 22 recommendations to the Department and 1 recommendation to the Legislature

The Department should:

1. Require the ESD, PMD, and WMSD to develop and implement risk-based, data-driven, and internally coordinated inspection approaches to help ensure higher-risk licensees and establishments are inspected and to help minimize duplicated effort and travel (see Finding 1, pages 5 through 11, for more information).
2. Require the ESD, PMD, and WMSD to identify and document the risk factors they will use to inform their risk-based inspection approaches and establish a process to periodically reassess these risk factors based on new information or changing circumstances (see Finding 1, pages 5 through 11, for more information).
3. Require the ESD, PMD, and WMSD to collect, maintain, and review sufficient data regarding licensees, devices, and establishments subject to inspection and the results of prior inspections to help plan and execute risk-based, data-driven, and internally coordinated inspection approaches (see Finding 1, pages 5 through 11, for more information).
4. Require the ESD, PMD, and WMSD to establish inspection goals and performance metrics for division inspectors, such as the number of inspections that inspectors should complete on a daily or weekly basis and time spent traveling versus performing inspections (see Finding 1, pages 5 through 11, for more information).
5. Develop and implement policies and procedures for regularly assessing and monitoring inspector performance against the established goals and performance metrics and reporting information about the divisions' inspection activities, goals, and performance metrics to Department management (see Finding 1, pages 5 through 11, for more information).
6. Centrally monitor division inspection activity and results and hold its divisions accountable against established expectations, inspection goals, and performance metrics (see Finding 1, pages 5 through 11, for more information).
7. Inspect all airport scales by the end of fiscal year 2021 in line with its established goal (see Finding 2, pages 12 through 14, for more information).
8. Implement its planned airport scale inspection program, including defining how frequently Department-licensed scales should be inspected based on assigned risk, in conjunction with its efforts to improve its inspection approach as recommended in Recommendations 1-6 in Finding 1 (see Finding 2, pages 12 through 14, for more information).
9. Work with its Assistant Attorney General to ensure it inspects licensed scales and packaged products sold by weight at medical marijuana dispensaries, as required by State law by working with licensed scale owners and other stakeholders, as appropriate, to determine a process for inspecting these scales (see Finding 2, pages 14 through 15, for more information).

10. Work with its Assistant Attorney General to develop and implement an inspection program for scales and products sold by weight at medical marijuana dispensaries, including defining how frequently Department-licensed scales should be inspected based on assigned risk, in conjunction with its efforts to improve its inspection approach as recommended in Recommendations 1-6 in Finding 1 (see Finding 2, pages 14 through 15, for more information).
11. Continue to obtain criminal history background checks for all applicants for an initial qualified applicator license (see Finding 3, pages 16 through 17, for more information).
12. Work with its Assistant Attorney General to determine what action the Department should take regarding the qualified applicator licenses it has issued since August 2017 without obtaining required fingerprint-based criminal history background checks and then take action accordingly (see Finding 3, pages 16 through 17, for more information).
13. Develop and implement a process for obtaining and reviewing the results of criminal history background checks for only those license applicants the Department has statutory authority to obtain this information (see Finding 3, pages 16 through 17, for more information).
14. If it does not receive statutory authority to obtain criminal history background checks for certified applicator license applicants, revise its rules to require certified applicator license applicants to self-disclose and attest to whether they have been convicted of a misdemeanor or felony (see Finding 3, pages 18 through 19, for more information).
15. Issue licenses to only those applicants who meet all licensing requirements (see Finding 4, pages 20 through 22, for more information).
16. Work with its Assistant Attorney General to determine what, if any, actions the Department should take regarding the licenses it has issued to applicants who did not meet all requirements and then take these actions accordingly (see Finding 4, pages 20 through 22, for more information).
17. Develop and implement licensing policies, procedures, guidance, and/or checklists that specify the documentation applicants must submit and the Department should review and retain to help ensure license applications are complete and that applicants pay all required licensing fees, and train staff on these policies and procedures (see Finding 4, pages 20 through 22, for more information).
18. Develop and implement a risk-based supervisory review process using risk factors, such as whether new staff are processing license applications or there are statute or rule changes to licensing requirements, to help ensure that Department staff issue licenses only to applicants that meet all requirements (see Finding 4, pages 20 through 22, for more information).
19. Comply with the State's public records laws and maintain documentation from initial industrial hemp applicants for all statutory license requirements to support its licensing decisions and allow it to fulfill public records requests (see Finding 5, pages 23 through 24, for more information).
20. Implement its revised industrial hemp program licensing and filing procedures (see Finding 5, pages 23 through 24, for more information).
21. Maintain records that are reasonably necessary to provide an accurate accounting of its licensing and inspection activities to license only qualified applicants and inspect regulated entities consistent with its records retention schedule and for the required time period (see Finding 5, pages 24 through 25, for more information).
22. Clearly communicate and provide training on records retention requirements and expectations to Department staff responsible for maintaining, filing, and retaining licensing and inspection records (see Finding 5, pages 24 through 25, for more information).

The Legislature should:

1. Consider revising statute to reinstate the Department's authority to obtain criminal history background checks of certified applicator license applicants, similar to qualified applicator license applicants (see Finding 3, pages 18 through 19, for more information).



## Objectives, scope, and methodology

The Office of the Auditor General has conducted this performance audit of the Department pursuant to a September 14, 2016, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

We used various methods to address the audit's objectives. These methods included reviewing applicable federal and State laws and rules, Department reports, and information on the Department's website. We also interviewed Department staff. In addition, we used the following specific methods to meet the audit objectives:

- To assess the Department's processes for inspecting regulated individuals, devices, and establishments in accordance with recommended practices and credible industry standards, we reviewed available calendar year 2018 inspection records and databases, policies and procedures manuals, and inspection checklists; observed inspectors performing inspections; and interviewed Department staff. In addition, we judgmentally selected a sample of 6 inspection types from the approximately 61 different types of inspections the Department conducts for further review, based on several factors, including whether the inspection is required by State law and/or a federal agency and whether the purpose of the inspection is to protect public health and/or consumer safety. Specifically, for the Weights and Measures Services Division, we reviewed the division's inspection and complaint databases for licensed fueling devices and small scales, and random samples of 10 of 614 small scale inspection reports and 10 of 203 large scale inspection reports completed in calendar year 2018. For the Pest Management Division, we reviewed random samples of 12 of 1,305 pest management application (use) inspection reports and 14 of 1,197 office and vehicle (nonuse) inspection reports completed in calendar year 2018 and observed 5 inspections between December 2018 and June 2019. For the Environmental Services Division, we reviewed the Department's available inspection reports for the 112 marketplace inspections completed in calendar year 2018 and observed 1 marketplace inspection in September 2019. We also judgmentally selected 2 other states—Idaho and Utah—and contacted officials from the Idaho State Department of Agriculture and Utah Department of Agriculture and Food to obtain additional information regarding their inspection functions. Further, we reviewed State vehicle fleet use information from the Arizona Department of Transportation. Finally, we reviewed recommended practices and credible industry standards issued by the U.S. Environmental Protection Agency, Organisation for Economic Co-operation and Development, the National Institute of Standards and Technology, and the National State Auditors Association.<sup>31</sup>

<sup>31</sup> Organisation for Economic Co-operation and Development (OECD). (2018). *OECD regulatory enforcement and inspections toolkit*. Paris, France: OECD Publishing. Retrieved 11/20/2019 from <https://www.oecd.org/gov/regulatory-policy/oecd-regulatory-enforcement-and-inspections-toolkit-9789264303959-en.htm>; OECD. (2014). *Regulatory enforcement and inspections, OECD best practice principles for regulatory policy*. Paris, France: OECD Publishing. Retrieved 7/2/2020 from <https://www.oecd-ilibrary.org/docserver/9789264208117-en.pdf?expires=1597164780&id=id&accname=guest&checksum=D8090B62BE02B0BB33AF9DE6AC54F854>; National State Auditors Association (NSAA). (2004). *Carrying out a state regulatory program: A National State Auditors Association best practice document*. Lexington, KY. Retrieved 6/24/2020 from [https://www.nasact.org/files/News\\_and\\_Publications/White\\_Papers\\_Reports/NSAA%20Best%20Practices%20Documents/2004\\_Carrying\\_Out\\_a\\_State\\_Regulatory\\_Program.pdf](https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Carrying_Out_a_State_Regulatory_Program.pdf); National Institute of Standards and Technology (NIST). (2017). *NIST handbook 155: Weights and measures program requirements: A handbook for the weights and measures administrator*. Gaithersburg, MD. Retrieved 3/17/2020 from <https://www.nist.gov/publications/weights-and-measures-program-requirements-handbook-weights-and-measures-administrator-0>; NIST. (2019). *NIST handbook 44: Specifications, tolerances, and other technical requirements for weighing and measuring devices*. Gaithersburg, MD. Retrieved 8/18/2020 from <https://nvlpubs.nist.gov/nistpubs/hb/2020/NIST.HB.44-2020.pdf>; U.S. Environmental Protection Agency. (2019). *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) inspection manual*. Washington, DC. Retrieved 8/11/2020 from <https://www.epa.gov/compliance/guidance-federal-insecticide-fungicide-and-rodenticide-act-fifra-inspection-manual>.

- To assess the frequency of Department inspections of licensed scales at airports and medical marijuana dispensaries located in the State, we reviewed the Weights and Measures Services Division’s licensing, inspection, and complaint databases and the corresponding reports for inspections conducted between calendar years 2015 through 2019.
- To determine if the Department complied with the statutory requirement to obtain and review a criminal history background check prior to licensing applicants seeking a pest management initial qualified applicator license, we reviewed the list of all initial qualified applicator license applications that the Department received between August 2017 and October 2019 and the Department’s pest management licensing database. We also reviewed applicable fingerprint processing order records that the Department submitted to and received from the Arizona Department of Public Safety. We also judgmentally selected 4 other states—California, Idaho, Nevada, and Utah—and reviewed these states’ licensing requirements for pest management applicators.
- To determine if the Department issued licenses to only those applicants who met all statutory and rule licensing requirements, we reviewed a random sample of 115 initial and renewal license applications selected from a judgmentally selected sample of 13 license types from the approximately 70 license, certification, permit, and registration types the Department issues. Specifically, we reviewed the following license applications the Department received in calendar year 2018: 18 of 1,934 initial and 15 of 6,917 renewal pest management certified and qualified applicator license applications; 13 of 51 initial registered service representative license applications; 9 of 20 initial public weighmaster license applications; 15 of 203 initial and 15 of 797 renewal agricultural pesticide applicator license applications; and 5 of 111 nursery license applications. We also reviewed 25 of 304 initial industrial hemp license applications the Department received between June 5, 2019, and August 20, 2019.
- To determine if the Department retained public records related to its licensing and inspection functions in accordance with State laws and records retention requirements, we reviewed the *Arizona Agency Handbook* and records retention schedules from the Arizona State Library, Archives, and Public Records.<sup>32</sup>
- To obtain information for the Introduction, we reviewed the Department’s website, fiscal year 2019 annual report, and Department-provided licensing, inspection, and staffing information.
- Our work on internal controls, including information system controls, included reviewing Department records, policies, and procedures; observing Department staff perform key tasks; and where applicable, testing compliance with statutory and rule requirements and Department policies. Our work included reviewing the following components and associated principles of internal control:
  - Control environment.
  - Risk assessment related to Department management’s responsibility to identify, analyze, and respond to risks and changes.
  - Control activities, including the design of control activities and information systems used and maintenance of accurate inspection and licensing data.
  - Information and communication related to the use of and retention of quality information.
  - Internal control system monitoring.

We reported our conclusions on applicable internal controls and the efforts the Department needs to take to improve them in Findings 1 through 5.

We selected the previously indicated audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

<sup>32</sup> Arizona Attorney General. (2018). *Arizona agency handbook*. Phoenix, AZ. Retrieved 4/11/2019 from <https://www.azag.gov/outreach/publications/agency-handbook>.

We conducted this performance audit 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.

We express our appreciation to the Department's Director and staff for their cooperation and assistance throughout the audit.

# DEPARTMENT RESPONSE



# Arizona Department of Agriculture

1688 W. Adams Street, Phoenix, Arizona 85007  
(602) 542-0990 FAX (602) 542-5420

September 24, 2020

Lindsey Perry  
Auditor General  
2910 North 44<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85018

Dear Ms. Perry:

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

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

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

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

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

Respectfully,

Mark W. Killian  
Director

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response explanation: This already has been implemented.

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

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

Response explanation: This already has been implemented.

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

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

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

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

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

Response explanation: The Department has trained its employees.

