



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

DEPARTMENT OF AGRICULTURE

Performance Audit Report

November 2017

Justin P. Wilson, Comptroller



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Sunset Performance Section**

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November 13, 2017

The Honorable Randy McNally
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Jai Templeton, Commissioner
Department of Agriculture
Nashville, TN 37220

Ladies and Gentlemen:

Transmitted herewith is the sunset performance audit of the Department of Agriculture. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law. Also included is a review of the Tennessee State Fair and Exposition Commission, as required by Section 4-57-107, *Tennessee Code Annotated*.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Department of Agriculture should be continued, restructured, or terminated.

Sincerely,

Deborah V. Loveless, CPA
Director

17012

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Department of Agriculture
November 2017

AUDIT OBJECTIVES

The objectives of the audit were to obtain and analyze information about the department's monitoring of soil conservation districts; determine if the department inspects food, dairy, and pest control facilities as frequently as required; determine the timeliness of complaint resolution concerning pesticide dealers and operators; describe the department's involvement with the 2016 Gatlinburg fire, burn permit process, and training required of firefighting personnel; determine if the department has instituted appropriate controls to monitor and reimburse expenses related to the State Fair Association; gather information about departmental responsibilities concerning hemp; and follow up on prior audit findings.

FINDINGS

Inspections of pest control businesses, retail food stores, and food manufacturers were not always completed as required by timeliness internal requirements, and pest control complaints were not resolved in accordance with departmental timeliness standards

The department contracts with three counties to perform retail food inspections in their jurisdictions. Our review also found that the department does not ensure that contracted food inspection jurisdictions submit required documentation and, thus, cannot assure they are meeting state standards. In addition, many of the food warehouses and food manufacturers we tested were not inspected as required. The division also regulates dairy farms and dairy plants. However, neither the division nor the federal government has an inspection frequency standard for seasonal dairies (page 7).

The department has implemented several key mechanisms to encourage quality soil conservation districts' management practices; however, some districts continue to struggle to adopt appropriate internal controls

The October 2013 performance audit of the department found weaknesses in the oversight of districts that potentially allowed fraud, incomplete support of expenses, and conflicts of interest, although no instances of those problems were identified. We found that the department has taken significant steps to improve its oversight of the districts and improved its monitoring of district activities. Several internal audits identified major district management problems. However, none of the internal audits reviewed found fraud or misuse of public funds. In addition, the *Handbook for Soil Conservation District Supervisors* does not address formal conflict of interest forms for district board members (page 12).

The department implemented prior recommendations to improve oversight of the Tennessee State Fair and Exposition Commission, but can encourage the Tennessee State Fair and Exposition Commission to take further steps to identify and disclose potential conflicts of interest

The commission has not adopted policies and procedures to identify conflicts of interest for departmental officials or members of the State Fair and Exposition Commission. As of March 2017, there were no departmental employees other than the commissioner serving on the commission. Department leadership is aware of the need to avoid conflicts of interest. However, the commission did not implement a formal policy or procedure to identify and address potential conflicts of interest (page 18).

Auditor Note: In June 2017, after field work for the audit was completed, the commission adopted a conflict of interest policy.

ADDITIONAL INFORMATION

We also present information on wildfire fighting (page 14) and industrial hemp (page 16).

Performance Audit Department of Agriculture

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Performance Audit Department of Agriculture

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Department of Agriculture was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-239, the Department of Agriculture is scheduled to terminate June 30, 2018. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the Department of Agriculture and to report to the Joint Government Operations Committee of the General Assembly. This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Department of Agriculture should be continued, restructured, or terminated. Also included is a review of the Tennessee State Fair and Exposition Commission, as required by Section 4-57-107, *Tennessee Code Annotated*.

HISTORY AND MISSION

The Department of Agriculture was established in 1854 with the original purpose of promoting agriculture through fairs and livestock expositions. This tradition continues today as the department helps expand markets for farm and forest products through promotions and industry development activities.

The mission of the Department of Agriculture is to serve the people of Tennessee by promoting wise uses of agricultural and forest resources, developing economic opportunities, and ensuring safe and dependable food and fiber. The department provides an array of consumer services from food safety and product quality assurance to pesticide regulation and environmental monitoring. Forestry services include landowner assistance, wildfire suppression, and state forest management. Water quality programs encourage and promote wise stewardship of natural resources.

DEPARTMENT ORGANIZATION AND RESPONSIBILITIES

As of October 2017, the department had 794 employees and an operating budget of over \$107,632,700, as illustrated in Appendix 1 (page 20). The department is organized under six Assistant Commissioners, each heading a division.

Division of Administration and Grants

The Division of Administration and Grants provides budget and fiscal oversight to support the department. The division also serves as the department's point of contact with other state agencies. Some of the division's larger programs are outlined below.

- *Land and Water Stewardship* – The department administers the Agricultural Resources Conservation Fund, a state program that provides grants to help landowners implement conservation practices designed to improve water quality. The revenue for the Agricultural Resources Conservation Fund is generated by the Real Estate Transfer Tax (Section 67-4-409, *Tennessee Code Annotated*). The division also administers the federally funded 319 Nonpoint Source Program, which awards grants to landowners to address soil erosion impacting rivers and streams.
- *Commodity Distribution* – The division administers Tennessee's implementation of the U.S. Department of Agriculture's food distribution program for the National School Lunch Program. This program is intended to support American agriculture while providing nutritious food to schoolchildren. This area also includes the Emergency Food Assistance Program, which supplements the diets of individuals with low incomes.
- *Tennessee Agricultural Enhancement Program (TAEP)* – Agricultural enhancement is a cost-share program designed to help Tennessee farmers make long-term, strategic investments. Participation allows producers to maximize farm profits, adapt to changing market situations, improve operational safety, increase farm efficiency, and make a positive economic impact in their communities.
- Other offices within this division include Grounds Keeping (maintenance for the Ellington Agricultural Center) and the Fair Administrator. The fair administrator oversees grants to assist fairs, livestock shows, agricultural youth organizations, and other programs promoting agriculture or providing agricultural education. These grants provide premium aid and merit awards. Additional information about the state fair is located on page 17 of this report.

Division of Market Development

Market Development's services range from working with traditional producer programs to industry development and international trade missions. Its aim is to increase farm income and expand markets for Tennessee's agricultural products. Market Development focuses on expanding markets for industries such as organics; biofuels; processed foods; aquaculture; wineries; horticulture; livestock; fruits and vegetables; and direct farm marketing, popularly referred to as agritourism. The department coordinates its efforts with the state's Department of Economic and Community Development.

Division of Forestry

The Division of Forestry promotes the wise use of forest resources. Some of its activities include

- advising private, non-industrial landowners on sustainable forestry practices;
- fighting and preventing wildfires by training volunteer fire departments, issuing burn permits, enforcing fire laws, and teaching the public fire safety;
- growing pine and hardwood seedlings at division nurseries for timber production, wildlife habitat, and erosion control;
- providing information to the public to slow the spread of certain forest pests;
- administering federal grants and providing technical assistance for urban forestry;
- managing state forests for benefits including recreation, wildlife, timber, and water quality; and
- working with the Tennessee Department of Environment and Conservation to monitor compliance with state water quality regulations.

Division of Consumer and Industry Services

The Division of Consumer and Industry Services monitors agricultural materials, products, and services to help assure quality, consumer protection, public safety, and a fair marketplace. Some of the division's key functions include

- monitoring and taking steps to prevent animal diseases;
- certifying nurseries, greenhouses, and plant dealers to encourage healthy, pest-free plant material;
- registering pesticides, certifying applicators, monitoring groundwater quality, and inspecting pest control businesses;
- inspecting dairy farms, dairy plants, milk transport trucks, dairy product distributors and milk samplers, and registering dairy products;
- monitoring the quality of feeds, seeds, and fertilizers;
- inspecting retail food stores, food manufacturers, warehouses, and distributors;
- enforcing bottled water regulations;
- performing custom slaughterhouse inspections;
- enforcing state laws prohibiting the sale of tobacco products to minors;
- testing devices such as fuel pumps, scales, and liquid propane gas meters for accuracy;
- inspecting net quantity on packaged products and accuracy of price verification systems;

- ensuring the accuracy of mass and volume standards; and
- providing laboratory support for animal diagnostics, food microbiology, toxicology, food residue, environmental monitoring, and quality assurance for agricultural products such as feed, seed, and fertilizer.

The remaining two assistant commissioners are responsible for

- Public Affairs Office – Oversees internal and external communications and provides administrative support for media relations, policy development, and all agency programs. The office also provides web development and international marketing. The Tennessee Agricultural Museum is part of the department’s outreach program to educate schoolchildren and adults regarding agriculture’s important past and current contribution to the state’s economy and culture.
- Policy and Legislation – provides information to, and acts as liaison with, the General Assembly and the Governor’s office on department matters. The division also supervises the Agricultural Crime Unit, which provides a range of security and investigative services to assist rural law enforcement efforts and respond to wildland arson, theft of livestock and farm equipment, and state forest security.

AUDIT SCOPE AND OBJECTIVES

We audited the activities of the Department of Agriculture and the Tennessee State Fair and Exposition Commission for the period October 2013 through June 2017. Our audit scope included a review of internal controls and compliance with laws, regulations, and provisions of contracts or grant agreements that are significant within the context of the audit objectives. Management of the Department of Agriculture is responsible for establishing and maintaining effective internal controls and for complying with applicable laws, regulations, and provisions of contracts or grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgement, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. Although our sample results provide a reasonable basis for drawing conclusions, the errors identified in these samples cannot be used to make statistically valid projections. We present more detailed information about our methodologies in the individual report sections.

We performed 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives were to

- obtain and analyze information about the department’s monitoring of soil conservation districts;
- determine if the department inspects food, dairy, and pest control facilities as frequently as required;
- determine the timeliness of complaint resolution concerning pesticide dealers and operators;
- describe the department’s involvement with the 2016 Gatlinburg fire, burn permit process, and training firefighting personnel;
- determine if the department has instituted appropriate controls to monitor and reimburse expenses related to the State Fair Association;
- gather information about departmental responsibilities concerning hemp; and
- follow up on prior audit findings.

PRIOR AUDIT FINDINGS FOLLOW-UP

We followed up on the findings and recommendations made in the most recent performance audit of the department, released in 2013. Prior audit findings on oversight of soil conservation districts, unsubstantiated payments to the districts, weights and measures inspection timeliness, payments to the Tennessee State Fair Association (TSFA), and a conflict of interest between the department and the TSFA were resolved. However, the Tennessee State Fair and Exposition Commission did not work with the association to adopt a formal policy and form to disclose potential conflicts of interest. (See Finding 3, page 18.) (*Auditor Note:* In June 2017, after field work for the audit was completed, the commission adopted a conflict of interest policy.)

The following prior audit findings were not resolved.

Prior Finding 4: Inspections of retail food stores and food manufacturers were not always conducted timely.

The finding is not resolved. Using methodology described in Finding 1 (page 7), we determined that retail food stores and food manufacturing businesses were not always inspected as frequently as required by internal guidelines. For example, of a sample of 25 food manufacturing facilities inspected between January 1, 2014, and December 31, 2016, 10 (40%) had not been inspected within the past six months, as required by internal policy.

Additional information is in Finding 1 (page 7).

Prior Finding 5: Pest-control company inspections and complaint investigations were not always completed in a timely manner.

The finding is not resolved. Using methodology outlined in Finding 1 (page 7), auditors found that 11 of the 28 businesses tested had not been inspected within the department's internal standard of 1 inspection per year.

Also, the department has an internal standard of resolving complaints within 90 days. Of the 421 complaints received between January 1, 2014, and December 31, 2016, 141 had not been resolved within 90 days. Additional information about our methodology and results is in Finding 1 (page 7).

METHODOLOGIES AND CONCLUSIONS

The Division of Consumer and Industry Services inspects a wide variety of business, including pest control facilities, retail food establishments, food warehouses, dairy farms, and dairy plants, to ensure the businesses protect public health and safety. Internal standards direct the division to conduct periodic inspections of the regulated businesses. Meeting inspection frequency standards helps to ensure public health and safety. Additionally, the division receives and responds to complaints about the regulated businesses.

The 2013 performance audit found that inspections of retail food stores and food manufacturers were not always conducted timely. Additionally, pest-control company inspections and complaint investigations were not always completed in a timely manner.

To follow up on the prior audit findings and evaluate whether the division conducted inspections as frequently as required by internal policies, we

- reviewed statute, department rules and regulations, internal department standards, and prior audits;
- interviewed department management and staff; and
- conducted file reviews and analyzed data on inspections and on pesticide complaint resolution timeliness.

Additional details of file reviews and data analysis are reported in relevant sections.

Finding 1

Inspections of pest control businesses, retail food stores, and food manufacturers were not always completed as required by timeliness internal requirements, and pest control complaints were not resolved in accordance with departmental timeliness standards

The Division of Consumer and Industry Services did not inspect many pest control businesses annually as required under internal guidelines. The division's pesticide group regulates businesses that perform routine pest-control activities, as well as restricted-use pesticide applicators that use more toxic chemicals and have more stringent training and certification requirements. As part of regulation, the division inspects pest control businesses and responds to complaints concerning pesticides. Both can involve visiting the business to determine if it meets state requirements. For example, an inspector might review the business's pesticide records, review the business's stock to ensure proper packaging and labeling, and collect a sample of pesticides. Failure to properly inspect pesticide companies presents a potential risk to the public that pesticide companies are operating in an unsafe manner.

To determine frequency of inspections of pest control businesses, we tested a stratified sample of 28 pest control businesses from 1,121 routine pest control businesses and 109 restricted-use applicators, inspected between January 1, 2014, and December 31, 2016. We found that 11 of the 28 pest control businesses (39%) had not been inspected within the prior year, as required by department standards.

Some Complaints Not Resolved in a Timely Manner

The division also responds to complaints about pest control companies, which often requires staff to conduct investigations. These complaints can allege problems such as a company or a location not storing or applying pesticides in a safe manner. Between January 1, 2014, and December 31, 2016, the division received 421 complaints, of which 54 were open as of February 2017.

The division's internal standard is to resolve complaints within 90 days. To determine if the division met its time resolution standards, we analyzed all 421 complaints received between January 1, 2014, and February 2017, and found that 141 of 421 complaints (33%) were not resolved within 90 days as required by internal policy.

Laboratory Backlog Likely Continues to Contribute to the Division's Failure to Resolve Most Complaints in a Timely Manner

The 2013 performance audit found most complaint handling delays were attributed to delays with obtaining test results from the department's laboratory. The department's laboratory is responsible for testing samples submitted from the entire department, with priority given to samples that pose the greatest potential risk to human health and safety. In response to the prior finding, division management explained that delays occurred because several chemist positions were open. However, the department was developing a process to send high-risk samples to a private laboratory to expedite the results.

The department has since developed a process to send the samples it believes pose the highest risk to health and human safety to a private lab. To compare timeliness of results received from the department's lab and the private lab, and the effect on resolving complaints, we evaluated the 30 complaints that had been open the longest between January 1, 2014, and December 31, 2016 (some of which were closed and some still open). Of the 30 complaints tested, the department lab tested 24 samples and a private contracted lab tested 6 samples.

There are no standards for how quickly state or contracted laboratories must process samples. However, in our sample, the department laboratory provided results in an average of 104 days and the private lab in an average of 20 days. Given the department's internal standard to handle complaints is 90 days, this single step contributed significantly to the department's inability to resolve these 30 complaints in a timely manner.

The department reported that the state laboratory had a backlog of complaint and other samples because it prioritizes samples based on potential to immediately impact public health and safety. As high priority samples come into the state lab, lower priority samples must wait. The number of samples coming into the lab do not allow the lab to complete both high priority and lower priority samples in a timely manner.

Retail Food Stores and Food Manufacturers Were Not Always Inspected as Frequently as Required by Standards

To minimize the risk to health and safety, the division regulates a variety of businesses in the food industry, including retail food stores and food manufacturers. To help ensure businesses meet regulations and ensure health and safety, the division periodically inspects regulated businesses. While the division conducts many of these inspections itself, it contracts with Davidson, Knox, and Shelby counties for retail food inspections in their jurisdictions.

The division bases inspection frequency on the risk a business poses to public health and safety. The higher the risk level, the more frequently the business is to be inspected. Facilities are placed in one of three risk categories. Under department procedures:

- Category 1 facilities, those considered to pose the most risk, must be inspected every 6 months. These include manufacturers of food of animal origin, ready-to-eat meals, baby food, egg and egg products, and prepared salad products.
- Category 2 facilities must be inspected every 12 months. Businesses in this category include manufacturers of candy, mushrooms, snack foods, and food additives.
- Category 3 facilities, which pose the lowest risk, must be inspected every 18 months. These include jam and jelly manufacturers, mills, and bakeries.

Because of the potential risk to public health and safety, it is essential that the food inspections are completed in a timely manner.

The 2013 performance audit found that inspections of retail food stores and food manufacturers were not always conducted as frequently as required. According to that audit, 3%

of all retail food inspections were overdue, and 18% of all food manufacturer inspections were overdue.

To evaluate whether the division conducted inspections as frequently as required, we

- reviewed statute, division rules and regulations, and standards;
- reviewed department records;
- interviewed division management and staff; and
- reviewed the department's contracts with Davidson, Knox, and Shelby counties to conduct retail food inspections.

We also conducted file reviews and analyzed department data to evaluate inspection frequency. Concerning the latter, we analyzed the department's computerized inspection records of all retail facilities between January 1, 2014, and December 31, 2016. We also selected a sample of food manufacturers, in the same date range as retail, to determine inspection frequency.

Our analysis focused on the number of inspections conducted, rather the number of businesses inspected, because of the lack of existing data queries from the information system and the potential difficulties and unreasonable time needed to build these queries. The department could not easily provide a list of businesses and their inspection dates. Because the sample focused on inspections rather than businesses, it is possible that it excluded businesses which were inspected only once or not at all within the period. For example, 271 of 18,517 businesses (1.5%) received only one inspection. However, based on our thorough analysis of the data, it is likely only a small number of businesses (if any) fell into these categories. As a result, in our professional judgement, the analysis limitations do not substantially impact our results.

Some High-risk Retail Food Facilities Were Not Inspected as Frequently as Required

We focused on category 1 facilities because they pose the highest risk to the public. In total, over 18,500 category 1 inspections were conducted between January 1, 2014, and December 31, 2016. Of these inspections, more than 7,000 inspections (39%) involved facilities that had not been inspected within the required 6 months.¹

In addition to the sample items, we also identified that many inspections from contracted county inspections were missing from the department's files. The division does not formally track contractor documentation submissions to support information in the department database. Without tracking whether the information has been submitted, the division cannot sufficiently monitor whether contractors conduct inspections according to contract terms. We contacted the three contracted counties, none of whom could provide all missing documentation records.

¹ To calculate the length of time between inspections in days for all analyses in this finding, auditors defined one month as 30 days.

Most Food Warehouses and Manufacturers Tested Were Not Inspected as Required

As with retail food establishments, food warehouses or manufacturer facilities are designated category 1, 2, or 3, and like retail food facilities, must be inspected every 6, 12, or 18 months.

We focused on category 1 food warehouses and manufacturers because they pose the highest risk to the public. In total, inspections were performed of 443 category 1 food warehouses and manufacturers between January 1, 2014, and December 31, 2016. To evaluate whether these inspections were performed as often as required, we selected a sample of 25 businesses from the population of 443 category 1 facilities. Ten of the 25 businesses (40%) had not been inspected within the past 6 months, as required.

All Required Dairy Inspections Were Completed on Time

To help ensure food safety, the division also regulates dairy farms and dairy plants.

The division's internal guidelines are consistent with Federal Pasteurized Milk Ordinance guidelines, which require dairy farms to be inspected every six months and require most full-time operational dairy plants to be inspected every three months. There is some variation for specific circumstances, such as dairy plants handling unpasteurized milk. To determine whether the division met inspection frequency guidelines, we tested a sample of 17 randomly selected full-time dairy plants inspected between January 1, 2014, and December 31, 2016. All selected dairy plants were inspected at least once every three months.

The standard dairy plant inspection guidelines apply to establishments that operate year-round. Some Tennessee dairy establishments only operate seasonally. Neither the division nor the federal government has an inspection frequency standard for seasonal establishments. The department may wish to establish inspection frequency for seasonal plants to ensure the public is protected, all regulated facilities are treated fairly, and the division has an inspection record of all dairies.

As a part of our analysis, we identified that the division uses a Microsoft DOS database to maintain dairy farm inspection data. While the system met the department's needs, as evidenced by 100% of sampled businesses inspected as required, Microsoft DOS is no longer supported by its developer and is considered out-of-date technology.

Recommendation

The department should ensure that all pest control and food safety inspections are conducted as frequently as required and should resolve pest control complaints according to policies. As part of this effort, the department may wish to consider outsourcing additional laboratory sample testing to reduce turnaround time. Additionally, the division should improve monitoring of contracted food inspectors to ensure contract compliance. The division should also consider developing inspection guidelines for seasonal dairy plant inspections.

Management's Comment

We concur.

Pest Control Complaints: The department has established a target of 90 days for pesticide complaint resolution. The department acknowledges that in 2013 the laboratory was not operating at maximum efficiency and has since adjusted management responsibilities and reclassified two seed analyst positions to chemist positions. From April 1, 2016 – September 30, 2016 pesticide complaint laboratory samples averaged a 66-day turnaround time. However, now that the laboratory has become fully staffed, samples from April 1, 2017 – September 30, 2017 reveal the turnaround time was 12 days.

In addition, the department has added a Customer Focused Government (CFG) goal this year to reduce overall pesticide related complaint resolution time by 20%. In order to assist in achieving this goal, the department is planning to utilize an administrative staff member who has experience analyzing processes and making recommendations to improve efficiency in program areas.

Retail Food Store and Food Manufacturing Inspections: The department adopted a standard operating procedure (SOP#: FOOD05) on March 31, 2017. It summarizes the department's policy on risk based inspection frequency of food establishments and says in part, "a firm determined to be high risk, necessitates two inspections per year and therefore is to be inspected approximately every six months." Although there are no legal requirements or mandates to inspect food establishments exactly every six months, we feel the intent of our SOP reflects regular inspection intervals that contribute to an acceptable risk level of food safety. Our new inspection and licensing program (AgILE) will enable inspectors to have up-to-date inspection information available on hand held devices and more accurately track inspection details including frequencies. Significant in the finding is that only 1.5% of businesses received only one inspection during the period.

Retail Food Store and Food Manufacturing Inspections by Counties: The department conducts random checks on inspections by the contract counties. This is now possible by utilizing the new data management system which was put in place in the food safety section as well as the contract counties as of April 25, 2016.

Dairy Plant Inspections: There are 24 dairy plants in Tennessee. Seasonal dairy plants are now visited by inspectors on the same schedule as other dairy plants, which Federal Pasteurized Milk Ordinance guidelines require every 3 months for plants that operate year-round. If the seasonal plant is not operating at the time of the visit it is so noted in the data-base.

All dairy program inspections and sampling records are now housed in the new data management system (AgILE) and no longer on the MS-DOS based system.

Finding 2

The department has implemented several key mechanisms to encourage quality soil conservation districts' management practices; however, some districts continue to struggle to adopt appropriate internal controls

The 95 soil conservation districts in Tennessee are each governed by a five-member board of directors under the oversight of the State Soil Conservation Committee. The statutorily created committee provides oversight and assistance to soil conservation districts in carrying out programs to control soil erosion and water quality improvement on farmland. The Department of Agriculture provides guidance on program implementation and other sound management practices, such as what costs are allowable under state and federal contracts.

According to the department's *Handbook for Soil Conservation District Supervisors*, districts' key roles include helping to control erosion of farmland and serving as a bridge between the agricultural and urban communities.

Soil conservation districts have three main sources of revenue:

- state funding from the Agricultural Resources Conservation Fund;
- federal funding from the Natural Resources Conservation Fund; and
- federal funding under Chapter 319 of the Clean Water Act.

The October 2013 performance audit of the Department of Agriculture found weaknesses in the oversight of districts that potentially allowed fraud, incomplete support of expenses, and conflicts of interest. While no evidence of fraud was found in the district files, there was potential for serious problems. Therefore, the 2013 performance audit recommended that the department take several steps to help the committee adequately oversee and ultimately improve district management. Recommendations to the department included the following:

- to ensure that program funds are spent properly and to help program management to monitor each district's expenditures, department management should require that each district submits, and program files contain, complete information and support for district expenditures funded through the department;
- to help prevent fraud or other problems such as conflicts of interest, the department should continue to work with the committee and the district boards to provide technical assistance and training to help boards effectively monitor the districts' activities; and
- in addition, the department should work with the committee to ensure district board members understand the statutory and contract provisions related to conflicts of interest, and that conflicts of interest are properly disclosed by the district board members.

To determine whether these prior recommendations were implemented, auditors

- interviewed department management, including internal audit staff;

- conducted a file review of internal audit working papers and final reports to evaluate the extent to which the department audited soil conservation districts;
- interviewed board members and staff of seven randomly selected districts;
- reviewed departmental policies and procedures; and
- reviewed applicable state statutes.

The Department Improved Oversight of Committee and District Activities

Since the prior 2013 audit, the department has taken significant steps to improve its oversight of the committee and districts, which should reduce the potential for fraud and other previously identified problems. For example, the department

- instituted substantive on-site monitoring of districts via internal audits of individual districts;
- increased and improved the documentation it systematically receives about districts' progress and management, which allows for better monitoring; and
- wrote and distributed a manual to assist districts in improving their internal management, as well as promoting strong department practices.

The manual contains strong recommendations and educates district and state management about

- implementing separation of duties;
- requiring board members to attest to the accuracy of the district's bank statements; and
- educating board members about potential conflicts of interest, such as having a financial interest in a district contractor, or owning land slated to be improved using district funds.

The *Handbook for Soil Conservation District Supervisors* does not address conflict of interest forms for district board members. Such forms are a standard management practice to help signatories understand and disclose conflicts of interest, as well as provide documentation should allegations arise in the future.

Department Efforts Detected District Problems

The department's efforts appear to have improved its monitoring of committee and district activities. Auditors reviewed 16 random district audits conducted by the department during calendar years 2014 through 2016. In total, the department's internal auditor performed 53 on-site reviews of districts. We found that 5 of the 16 internal audits reviewed identified major district management problems, such as inadequate separation of duties, incomplete documentation of businesses performing work using district money, internal calculations of the amount of allowed shared cost dollars that can be charged by contractors to the district, and a general lack of internal controls. This suggests that some districts are continuing to struggle to develop and maintain

proper management practices, although it is being identified by the department's internal audit efforts. None of the internal audits reviewed found fraud or misuse of public funds.

Recommendation

The department should continue to properly monitor and assist the State Soil Conservation Committee and soil conservation districts to improve management practices. As a part of this effort, the department should strongly recommend that district board members sign formal conflict of interest statements.

Management's Comment

We concur. The department will continue to distribute the manual to soil conservation districts to educate and inform them about safeguarding assets, funds, and internal controls. These manuals have proven to be helpful in guiding soil conservation districts in implementing smart financial practices.

In addition, our internal audit staff will continue to perform reviews on a regular basis. Any findings are reported to the soil conservation district board in writing. The board is given 30 days to respond with an explanation as to how the issue will be resolved and remedied going forward.

The department will require, as a condition of issuance of grant contracts, that each Soil Conservation District Supervisor sign a conflict of interest statement. These statements will outline the process of recusal and the documentation of such in the SCD meeting minutes of any supervisor who makes application for cost share funding through the grant, and for any supervisor who owns a business that may supply goods and services to cost-share recipients.

ADDITIONAL INFORMATION OBTAINED TO ADDRESS AUDIT OBJECTIVES

The following topics are included in this report to assist the Government Operations Committee in evaluating the Department of Agriculture.

DEPARTMENT FIREFIGHTING

The department, by statute, can investigate, prevent, or control forest, woods, brush, or grass fires anywhere in the state. The department and other firefighting organizations typically work together when available and needed to extinguish fires, regardless of jurisdiction. Department firefighters helped to extinguish six major fires in 2016 that eventually qualified for federal assistance. While the fires centered in Sevier County in late 2016 received considerable public attention, in 2016 the department was involved in fighting five major and several other minor fires burning over 75,000 acres statewide. With one exception, the department's fire suppression efforts in Sevier County took place on private property. Officials in the Great Smoky

Mountains National Park authorized the Division of Forestry to establish a dozer line from the Twin Creeks area down-slope to Baskins Creek in an effort to prevent some of the fire from spreading into Gatlinburg. Erratic fire conditions prevented the Division of Forestry from completing the dozer line. The division's involvement on the Park fire was limited to this effort. In the 2016 Sevier County fires, the department worked with the Gatlinburg Fire Department, other local fire departments, the Army National Guard, the National Park Service, and other entities.

Such fires impact the department's budget. The department estimates its cost to fight fires was \$9.4 million in fiscal years 2015 and 2016. In fiscal year 2017, the fires in southwestern Tennessee in September 2016 and in Sevier County in November 2016 increased the department's expenditures for combatting wildfires. For the fiscal year ending June 30, 2017, the funds allocated from the Governor's supplemental appropriation totaled \$1,753,357. In addition, a supplemental appropriation of \$517,455 was included in the department's budget for fiscal year 2018. A federal emergency declaration covered 75% of the costs incurred in combatting the Sevier County fires.

2016 Sevier County Fires

According to department management, the sequence of events in late 2016 was as follows:

- Department personnel were aware of fires starting on National Park Service land in Sevier County. The initial fire started at the top of the mountain near the summit of the Chimneys and was contained to four acres at first but then spread.
- The National Park Service notified the department in November of 2016 that the fires were threatening Gatlinburg and the surrounding area.
- The National Park Service and department set up control lines to prevent the fires from spreading, as opposed to directly fighting the fires from the inside. This approach was used because fires are a normal part of a forest's life cycle and thus can be considered healthy when contained; it is difficult to mobilize firefighting resources in remote, rugged areas; and the National Park Service expected, based on typical fire patterns, the fires would probably burn out on their own.
- Eighty-mile-per-hour winds the weekend after Thanksgiving 2016 caused the fire to spread quickly.
- Through combined efforts, the complex of fires was extinguished in early December 2016, after causing significant damage.

Controlled Burns

The department has several tools to help prevent fires, including regulation of controlled burns, which can spread if not properly managed. Section 39-14-306, *Tennessee Code Annotated*, requires anyone starting an open-air fire within 500 feet of a forest, grassland, or woodland in most areas of the state between October 15 and May 15 to obtain a burn permit from the department. The department does not issue burn permits for Davidson, Hamilton, Knox, Madison, and Shelby counties. The local governments within those counties are responsible for regulating pre-planned burns in their jurisdiction.

The permit process helps educate applicants, provides an opportunity for the department to offer advice on safe controlled-burn practices and allows the department to halt an inappropriate fire. There are no fees to apply for a permit. Depending on the size of the controlled burn, citizens apply online or by telephone. In 2016, the department issued almost 390,000 burn permits.

The department also reduces the potential for an uncontrolled burn to spread by directly conducting controlled burns for a fee. These services are available for private and government owned property. As of March 2017, the department charged \$22 per acre for areas of less than a hundred acres, and \$11 an acre if the controlled burn will cover more than a hundred acres.

Firefighter Qualifications

Because of the dangerous nature of fires, it is important that personnel assigned to fight wildfires are adequately trained and able to safely perform critical job functions. The National Wildfire Coordinating Group sets standards for its member firefighting entities. Members include the department, the U.S. National Forest Service, the U.S. Bureau of Indian Affairs, the National Park Service, the U.S. Bureau of Land Management, and all other state forestry agencies. Members must ensure their firefighters meet the standards.

The standards require most wildfire fighting personnel to receive classroom training and meet physical requirements. The basic training course is approximately 40 hours, plus 6 hours of a refresher course annually. Physical tests include walking two miles in 40 minutes carrying a 20-pound pack. Specialty personnel, such as commanders, pilots, and bulldozer operators must fulfill additional requirements. The department offers the training to all wildfire fighting personnel, regardless of employer.

HEMP – EMERGING ISSUE

According to the National Conference of State Legislatures, state legislatures across the country have acted to promote industrial hemp as an agricultural commodity.

The department licenses and inspects hemp farms under the Tennessee Industrial Hemp Pilot Program. Hemp farmers are required to obtain an annual license from the department and sign a statement asserting they have not been convicted of a felony. They must also enter a Memorandum of Understanding with the department to act as an extension of the department for research into the cultivation of industrial hemp. The grower absorbs all risks and costs of growing a hemp crop. Between January and October of 2017, 79 applications were submitted, all of which were approved.

What Is Industrial Hemp?

Hemp originates from the same plant as marijuana: cannabis. However, hemp is typically distinguished by its use, physical appearance, and lower concentration of tetrahydrocannabinol (THC). Hemp is used in a wide variety of products such as fibers, textiles, paper, construction, insulation materials, cosmetic products, animal feed, and food.

Source: National Conference of State Legislatures.

The department reports inspecting hemp farms two to three times per year. These inspections include taking and testing samples of hemp plants to ensure their THC levels do not

exceed maximum requirements. To promote program self-sufficiency, hemp farmers pay a fee for inspections.

Due to its nature, hemp poses law enforcement and regulatory challenges. For example, marijuana is classified as a Schedule I controlled substance. However, law enforcement officials cannot authoritatively distinguish between marijuana and hemp without testing. Additionally, while the state authorizes growing of hemp, some uses of the resulting final product are unauthorized.

STATE FAIR AND EXPOSITION COMMISSION

In May 2012, the Tennessee State Fair and Exposition Act (codified as Title 4, Chapter 57, *Tennessee Code Annotated*) created the State Fair and Exposition Commission. The stated intent was that the commission would be “the sole body in Tennessee charged with administering a state fair and exposition.” According to Section 4-57-104, *Tennessee Code Annotated*, the commission is administratively attached to the Department of Agriculture and is composed of the following members: the Commissioners of Agriculture, Tourist Development, and Economic and Community Development, or their designees, who are ex-officio members with voting rights; the Dean of the University of Tennessee Extension; the President of the Tennessee Farm Bureau; one member nominated by the mayor of the host county of the fair or exposition; and such other members as the Governor may appoint. As of October 2017, there were eight commission members and one vacancy, as listed in Appendix 2 (see page 21).

The commission is authorized by Section 4-57-105, *Tennessee Code Annotated*, to

- contract with a Tennessee nonprofit corporation to operate, manage, and conduct at least one fair or exposition annually, under the supervision of the commission;
- enter into any contracts and agreements necessary and perform acts necessary to carry out the purposes of the chapter;
- maintain and manage property held by the state for conducting fairs, expositions, and exhibits;
- accept gifts, contributions, and bequests of unrestricted funds for furthering the objectives of the commission’s programs;
- accept, on behalf of the state, conveyances of property for the purposes of conducting fairs, expositions, and exhibits;
- sell or convey property, land, or buildings under its management, subject to the approval of the State Building Commission;
- grant leases on the property, land, or buildings under the management of the commission when they appear to be in the best interest of the state;
- recommend to the Commissioner of Agriculture rules and regulations that should be promulgated in accordance with the Uniform Administrative Procedures Act; and

- form advisory panels of qualified persons within the state, as needed, to obtain their advice on matters pertaining to the state fair.

Under these statutes, the commission does not directly operate or manage any state fairs. Rather, it has contracted with the nonprofit Tennessee State Fair Association. The department passes grant funding to the association, reviews documentation submitted by contractors to the association to justify reimbursement from grant funds, and handles other administrative matters.

The grant terms include criteria under which association and contractor costs can be reimbursed using grant funding. For example, costs of facility rentals, awards for contest entrants, demonstrations, and judges can be reimbursed.

The 2013 performance audit found that the grant payments by the department to the association were paid prematurely, without sufficient documentation, and commission membership involved a conflict of interest between department management and staff.

To determine whether the findings were resolved, we

- interviewed department staff and commission members;
- reviewed the contract between the department and the association;
- reviewed leases between the association and the Metropolitan Government of Nashville and Davidson County; and
- reviewed all reimbursement payments made by the department to the association in 2016.

In total, the department reimbursed the State Fair Association \$155,250 to operate the state fair in 2016. A total of 13 entities, as well as numerous individuals and the Metropolitan Government of Nashville and Davidson County, qualified for reimbursement according to the terms of the contract. We found all reimbursement payments made in 2016 were adequately supported at the time of payment and there was no conflict of interest between the commission and the State Fair Association. The finding is resolved. However, further action should be taken to prevent such a conflict in the future.

Finding 3

The department implemented prior recommendations to improve oversight of the Tennessee State Fair and Exposition Commission, but can encourage the Tennessee State Fair and Exposition Commission to take further steps to identify and disclose potential conflicts of interest

When the audit team conducted field work, the Tennessee State Fair and Exposition Commission had not adopted policies and procedures to identify conflicts of interest. As of March 2017, one departmental employee (the commissioner) served on the commission, by statute. Department officials were aware of the need to avoid a conflict of interest.

Recommendation

The Tennessee State Fair and Exposition Commission should develop a conflict of interest form to disclose any commissioners' potential conflicts of interest in selecting and awarding the contract to conduct the state fair.

Auditor Note: In June 2017, after field work for the audit was completed, the commission adopted a conflict of interest policy.

Management's Comment

We concur. In concert with the conflict of interest policy adopted by the commission, the department will develop a form to be used as part of the RFP process to contract with a Tennessee nonprofit corporation to operate, manage, and conduct the state fair. The form, to be completed and signed by each commissioner, will enable the members to disclose any potential conflict of interest regarding all entities submitting a proposal.

APPENDICES

**APPENDIX 1
Financial Information**

**Actual, Estimated, and Budgeted Revenue Sources
For Fiscal Years 2016, 2017, and 2018**

	Actual Fiscal Year 2015-2016	Estimated Fiscal Year 2016-2017	Recommended Fiscal Year 2017-2018
State	\$61,545,500	\$74,318,100	\$78,388,300
Federal	12,683,700	15,784,300	13,483,100
<u>Other</u>	<u>15,908,800</u>	<u>15,374,400</u>	<u>15,761,300</u>
Total	<u>\$90,138,000</u>	<u>\$105,476,800</u>	<u>\$107,632,700</u>

Source: *The Budget 2017-18*.

**Estimated Expenditures by Account
For the Fiscal Year Ended June 30, 2017**

<i>Account</i>	<i>Amount</i>	<i>% of Total</i>
Administration and Grants	\$ 16,655,600	15%
Agricultural Resources Conservation Fund	3,187,500	3%
Grain Indemnity Fund	126,700	<1%
Certified Cotton Growers' Organization Fund	250,000	<1%
Market Development	21,924,700	21%
Consumer and Industry Services	24,449,500	23%
Agricultural Regulatory Fund	10,473,200	10%
Forestry	30,408,300	28%
Forestry Maintenance	157,200	<1%
Total Expenditures	\$107,632,700	100%

Source: Department of Agriculture.

APPENDIX 2
2017 Tennessee State Fair and Exposition Commission Members²

Board Member	Organization or Position Representing
Bo Roberts, Chairman	Governor's appointment
Jai Templeton	Commissioner of Agriculture
Kevin Triplett	Commissioner of Tourist Development
Amy New	Assistant Commissioner of Economic and Community Development
Jeff Aiken	President, Tennessee Farm Bureau
Rogers Anderson	Mayor, Williamson County [Governor's appointment]
Jim Forkum	Davidson County representative [host county]
Dr. Robert Burns	Interim Dean, University of Tennessee Extension

Source: Department of Agriculture website as of October 16, 2017.

² As of November 2017, there was one vacancy on the commission. The Department of Agriculture submitted a nomination to the governor, but the position had not yet been filled.