

# COLORADO OFFICE OF THE STATE AUDITOR



DEPARTMENT OF AGRICULTURE

## PET ANIMAL CARE FACILITIES ACT PROGRAM



JUNE 2015

PERFORMANCE AUDIT

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# OFFICE OF THE STATE AUDITOR



June 23, 2015

DIANNE E. RAY, CPA  
—  
STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Pet Animal Care Facilities Act Program within the Department of Agriculture. This audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department.

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# REPORT HIGHLIGHTS



## PET ANIMAL CARE FACILITIES ACT PROGRAM PERFORMANCE AUDIT, JUNE 2015

DEPARTMENT OF AGRICULTURE

### CONCERN

We found the Department of Agriculture (Department) lacks sufficient controls to ensure the timely inspection of licensed facilities; the effective use of enforcement authority against non-compliant facilities; effective oversight of the inspection process; and that actual and perceived conflicts of interest are identified and disclosed.

### KEY FACTS AND FINDINGS

### BACKGROUND

- As of January 2015, the Program had failed to conduct routine inspections within the prescribed timeframe at 357 of the 1,839 licensed facilities (19 percent). Of the 357 facilities, 143 were more than 12 months overdue for an inspection (40 percent). One facility had not received an inspection in 28 months.
- In Calendar Year 2014, the Program failed to conduct complaint investigations within the 5 day requirement for 13 of the 20 complaints in our sample (65 percent). One investigation did not occur until 47 days after the complaint was received by the Department.
- The Department does not regularly and consistently enforce penalties against facilities found to be in violation of regulations. In our sample of 45 routine inspections, inspectors identified at least one violation at 36 facilities; eight of the 36 facilities were found to have five or more violations, some of which directly affected the health and welfare of the animals in the facilities. However, the Department did not issue civil fines, cease and desist orders, or license suspensions or revocations for any of these facilities.
- The Department lacks key controls for ensuring that inspections and enforcement actions are consistent among inspectors and that all pet care facilities are treated equitably across the state. We found that inspectors do not consistently classify the severity level of violations or conduct reinspections or fail facilities when violations are found, and the Department has not provided supervisory review of inspections and enforcement actions.
- The Department lacks sufficient controls for ensuring staff identify and disclose actual and perceived conflicts of interest in order to ensure public confidence in the Program.

- The Pet Animal Care Facilities Act Program licenses and inspects facilities that care for pet animals, which includes breeders, boarders, shelters, groomers, and trainers.
- As of January 2015, the Program had 1,839 licensed facilities in its database.
- The Program has five inspectors tasked with inspecting facilities, locating unlicensed facilities, and conducting complaint investigations.
- The Program is funded through license fees, which are collected each year and range from \$175 to \$400, depending on the type of license.

### KEY RECOMMENDATIONS

The Department of Agriculture should:

- Improve oversight of the inspection process to ensure inspections are timely, effective, and in accordance with Pet Animal Care Facilities Act requirements.
- Strengthen Program effectiveness by using enforcement provisions to hold facility owners accountable for complying with Program requirements.
- Improve controls for ensuring inspection results and enforcement actions are consistent across inspection areas.
- Improve controls for inspection staff to identify and disclose actual and perceived conflicts of interest.

The Department agreed with these recommendations.



# RECOMMENDATION LOCATOR

AGENCY ADDRESSED: DEPARTMENT OF AGRICULTURE

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
1	31	Improve oversight of the inspection process by (A) conducting a comprehensive assessment of workload distribution to establish realistic goals, (B) regularly monitoring inspections to adjust goals for efficiency, (C) modifying the current database, or adopting a new one, to track historical data for each facility, and (D) implementing mechanisms to ensure inspections occur and facilities are notified of the results.	AGREE	A DECEMBER 2016 B DECEMBER 2016 C JUNE 2016 D FEBRUARY 2015

AGENCY ADDRESSED: DEPARTMENT OF AGRICULTURE

REC. NO.	PAGE NO.	RECOMMENDATION SUMMARY	AGENCY RESPONSE	IMPLEMENTATION DATE
2	43	Strengthen Pet Animal Care Facilities Act Program (Program) effectiveness and hold facility owners accountable by (A) developing guidelines and procedures to ensure consistent enforcement, (B) amending rules and policies to provide greater flexibility to revoke a license, (C) implementing a risk-based approach for conducting reinspections, and (D) tracking correction reports and previous enforcement actions taken against facilities.	AGREE	A JULY 2015 B JUNE 2016 C MARCH 2015 D JUNE 2016
3	52	Improve controls and oversight over the inspection process by (A) clarifying policies and definitions inspectors use to conduct inspections, classify violations, and enforce program requirements, and (B) requiring supervisory review of inspections to ensure violations are treated equitably across facilities.	AGREE	A JULY 2015 B JULY 2015
4	59	Ensure that Program inspection staff follow ethical standards and adequately address conflicts of interest by developing guidance for inspection staff on identifying and preventing conflicts of interest, disclosing conflicts when they occur, and providing training to staff on this guidance.	AGREE	JULY 2015

# CHAPTER 1

## OVERVIEW OF THE PET ANIMAL CARE FACILITIES ACT PROGRAM

A majority of the United States population owns pets, and because of that, spending on pet care is a large part of the economy. According to *Beyond the Numbers, Spending on Pets*, a 2013 report from the United States Bureau of Labor Statistics, nearly 75 percent of American households own at least one pet and in 2011, Americans spent approximately \$61.4 billion dollars on their pets.

Colorado's Pet Animal Care Facilities Act (Act) was created in statute [Sections 35-80-101 through 117, C.R.S.] to govern the licensing and inspection of pet care facilities. The Pet Animal Care Facilities Act Program's (Program) licensing and inspection authority extends to pet care facilities such as dog, cat, and bird breeders; groomers; animal rescues; animal shelters; boarders; trainers; and retailers. The Department of Health was responsible for monitoring pet animal care facilities until 1991, when funding for its program was cut. In 1994, under Senate Bill 94-23, the Program was reestablished under the Department of Agriculture (Department).

## DEPARTMENT OF AGRICULTURE

The Department is responsible for regulating pet care facilities in Colorado. Statute [Section 35-80-109, C.R.S.] provides the Commissioner of Agriculture (Commissioner) with the power to administer and enforce the Act. This includes adopting rules that, among other things, set minimum standards for facilities (e.g., sanitation, ventilation, enclosure requirements, and nutrition); set the amount of license fees; establish the qualifications for licensing applicants; and govern how licenses will be issued. There are standards to which all facilities must adhere, such as protection from chemical solutions, retention of records for incidents, and use of enclosures that allow animals to turn around and exercise normal posture. Certain facilities may also have specific requirements, including availability of an isolation room at boarding/sheltering facilities, proper tethering practices at grooming facilities, and harnesses and enclosures used in transportation of animals. The Inspections and Consumer Services Division (Division) within the Department administers the Program. Prior to November 2014, the Animal Health Division administered the Program.

The Commissioner is also responsible for appointing members of an Advisory Committee. Established by statute [Section 35-80-115, C.R.S.], the Advisory Committee is tasked with advising the Commissioner on the regulation of pet care and providing ongoing review of statutes. The Advisory Committee consists of 17 members

who are appointed for 3-year terms. Each of the Advisory Committee members must represent different areas of pet animal care (e.g., animal rescue, breeders, boarders, and groomers). The Advisory Committee meets twice a year, once in the spring and once in the fall.

## PET ANIMAL CARE FACILITIES ACT PROGRAM

Statute [Section 35-80-102 (10), C.R.S.] defines pet animals as, “dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold, transferred, or retained for the purpose of being kept as a household pet.” Animals that are livestock or that are used for working purposes on a farm or a ranch are not included under this Act.

According to statute [Section 35-80-104, C.R.S.], all pet animal care facilities must be licensed by the Department. Facility owners must submit licensing applications, and the Department issues licenses to facilities following approval of the applications and successful completion of an initial inspection of the facilities. According to Department rule [8 CCR 1201-11 (2)(A)], licenses are good for a 12-month period; licenses must be renewed each year. All renewal applications, along with payment for the license fee are due to the Commissioner’s Office on or before March 1 of each year, regardless of when the facility was licensed during the license year; there is no proration of license fees.

In 2014, there were a total of 1,839 pet animal care facilities licensed by the Program. A facility can have more than one active license (e.g., a boarding facility can also have a grooming license). Exhibit 1.1 shows that from License Year 2011 to 2014 the total number of active licenses has increased by 5 percent, while the total number of licensed facilities has decreased by 5 percent. Groomers and boarding/training facilities represent the largest percentage of licensed facilities.

EXHIBIT 1.1 PET ANIMAL CARE FACILITIES TYPE AND NUMBER OF LICENSES MARCH 1, 2011 THROUGH FEBRUARY 28, 2014 <sup>1</sup>					
LICENSE TYPE	2011	2012	2013	2014 <sup>2</sup>	PERCENTAGE CHANGE
Grooming	901	917	938	1,041	16%
Boarding Training	498	499	505	526	6%
Retail/Wholesale	161	168	164	162	<1%
Animal Shelter	159	154	152	152	-4%
Dog Breeder, Small Scale	153	143	143	140	-8%
Animal Rescue	113	118	116	121	7%
Retail Aquarium Only	87	84	58	57	-34%
Pet Handler	46	45	37	27	-41%
Dog Breeder, Large Scale	25	22	20	23	-8%
Cat Breeder	8	6	6	9	13%
Small Animal Breeder	9	9	10	15	67%
Bird Breeder, Common	9	9	13	11	22%
Network Boarding <sup>3</sup>	9	7	8	8	-11%
Bird Breeder, Uncommon	9	6	5	6	-33%
<b>TOTAL LICENSES</b>	<b>2,187</b>	<b>2,187</b>	<b>2,175</b>	<b>2,298</b>	<b>5%</b>
<b>TOTAL FACILITIES<sup>4</sup></b>	<b>1,933</b>	<b>1,925</b>	<b>1,955</b>	<b>1,839</b>	<b>-5%</b>

SOURCE: Pet Animal Care Facilities Act Program Annual Reports Fiscal Years 2010-2013.

<sup>1</sup> The Program's license year runs from March 1st through February 28th.

<sup>2</sup> Data for 2014 was compiled by auditors from the Program's database as of January 2015; this means that the data represent 11 months of the license year.

<sup>3</sup> Network Boarding facilities are owned by organizations that do not board or train animals at their location but at other locations.

<sup>4</sup> A single licensed facility may contain more than one license category.

Statute [Section 35-80-110, C.R.S.] also gives the Commissioner the authority to inspect facilities. Any facility not in compliance with the regulations for the type of facility operated may be subject to penalties, including a letter of admonition from the Commissioner; denial, suspension, restriction, or revocation of the license; or civil penalties or misdemeanor charges.

The Program is operated within the Division with seven Full-Time Equivalent (FTE) staff, which includes:

- One Program administrator responsible for administering the Program and its budget, monitoring legislation, reviewing and evaluating inspections and investigations, and acting as intergovernmental liaison.

- One lead inspector responsible for training inspectors, conducting inspections, investigating complaints, preparing reports, providing quality control and ensuring standards of work for other inspectors, and recommending disciplinary actions where appropriate.
- Four inspectors responsible for conducting inspections, investigating complaints, preparing reports, and recommending disciplinary actions where appropriate.
- One administrative assistant responsible for providing administrative support, answering phones, taking complaints, processing license applications, and maintaining records.

The Program was scheduled for repeal July 1, 2014 due to a statutory sunset provision. Prior to its repeal, the Department of Regulatory Agencies conducted a sunset review in 2013 to assess whether the Program should continue or be abolished. The sunset review recommended that the Program continue for 7 more years and it made several recommendations related to the licensing process and making administrative changes to the Advisory Committee. The Program's next sunset review is due by September 2019.

## FUNDING

The Program is cash funded through the license fees it collects for initial license applications and annual renewals. For Fiscal Years 2010 through 2014, the Program's annual revenue and expenditures have been around \$600,000. License fees range from \$175 to \$400 depending on the type of facility, as shown in Exhibit 1.2. Facilities must hold a separate license for each category they function under. A facility with multiple licenses pays for the classification with the highest annual fee, plus \$50 for each additional license category.

EXHIBIT 1.2 PET ANIMAL CARE FACILITIES PROGRAM 2014 LICENSE FEES	
LICENSE TYPE	LICENSE FEE
Boarding/Training	\$400
Network Boarding	\$400
Retail/Wholesale	\$400
Animal Shelter	\$350/\$400 <sup>1</sup>
Dog Breeder, Large Scale	\$400
Dog Breeder, Small Scale	\$350
Small Animal Breeder	\$350
Grooming	\$320
Cat Breeder	\$300
Animal Rescue	\$300 <sup>2</sup>
Retail Aquarium Only	\$300
Bird Breeder, Uncommon	\$275
Bird Breeder, Common	\$175
Pet Handler	\$175

SOURCE: Pet Animal Care Facilities Act Program Rules 8 CCR 1201-11(4)(D).  
<sup>1</sup> If fewer than 3,000 transfers per year, the license fee is \$350. If more than 3,000 transfers per year, the license fee is \$400.  
<sup>2</sup> If applicant demonstrates Colorado non-profit status and 501(c) 3 in good standing, then the license fee is \$175.

## AUDIT PURPOSE, SCOPE, AND METHODOLOGY

This report includes the results of our performance audit of the Pet Animal Care Facilities Act Program at the Department of Agriculture. We conducted this audit pursuant to Section 2-3-103(1), C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. Audit work was performed from December 2014 through June 2015. We appreciate the cooperation and assistance provided by the management and staff of the Department of Agriculture during this audit.

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 the evidence

obtained provides a reasonable basis for our findings and conclusions based on audit objectives.

The key objectives of the audit were to assess the Department's:

- Pre-license and routine inspection and complaint investigation processes to ensure they are conducted in a timely manner and in accordance with applicable statutory and regulatory requirements.
- Enforcement process used when violations are identified through the inspection and complaint investigation processes to ensure that it is consistent across licensees, and violations are corrected and resolved appropriately and in a timely manner.
- Conflict of interest policies and procedures, specifically related to inspection staff who serve in a regulatory role.

To accomplish our audit objectives we performed the following audit work:

- Reviewed applicable statutes; rules; Department policies and procedures; and best practices related to the licensing, inspection, complaint, and enforcement processes and conflicts of interest.
- Interviewed Department and Program staff to determine how applications are processed; inspections are scheduled, conducted, and reviewed; complaints are received, disseminated to inspectors, and investigated; penalties are decided upon and enforced; and conflicts of interest are disclosed.
- Analyzed the Program's database records as of January 2015 for all licensees to assess the number of active licenses and the timeliness of routine inspections, including the number of facilities overdue for a routine inspection and the amount of time overdue.

This audit also included a review of the Department's compliance with the SMART Government Act as it relates to the Program.

We relied on sampling techniques to support our audit work. We designed our samples based on our audit objectives to test whether the Department conducted timely inspections and investigations, as well as whether different types of facilities and facilities located in different inspection regions around the state were inspected consistently and whether violations identified at those facilities were enforced equitably. We also selected the sample to ensure that different license types were captured while ensuring a sample size for each type of license selected. Specifically, we selected and reviewed the following samples:

- A non-statistical, random sample of 20 applications submitted and processed during Calendar Year 2014, to assess the timeliness of the application review and pre-licensing inspection processes, whether licensing decisions were made consistently and in accordance with statutory and regulatory requirements, and whether there was supervisory review of the pre-license inspection.
- A non-statistical, judgmental sample of the most recent routine inspections conducted for 45 facilities to determine the number and type of violations noted during the inspections, the penalties imposed for those violations, the disposition of those violations and penalties, and if there was supervisory review of the inspection results.
- A non-statistical, random sample of 20 complaints received during Calendar Year 2014 across license types to determine the timeliness in which they were investigated and resolved; whether any violations were noted, and if so, what penalty was assessed; and if there was supervisory review of the investigation results.
- The 106 violations identified in our routine inspection and complaint investigation samples to determine if Program staff assessed penalties consistently, appropriately, and equitably for all licensees in the sample.

When samples were chosen, the results of our testing were not intended to be projected to the entire population. Rather, the samples were selected to provide sufficient coverage of those areas that were significant to the objectives of this audit.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTER 2.



# CHAPTER 2

## PET CARE FACILITIES INSPECTIONS

The mission of the Pet Animal Care Facilities Act Program (Program) is to protect the health and safety of animals in pet care facilities. In doing this, the Program works to ensure that pet care facilities are appropriately licensed, and inspections of each facility are conducted to certify that they comply with the standards established by the Commissioner of Agriculture (Commissioner). The Program's five inspectors are dispersed throughout the state among five inspection areas. Inspectors are responsible for inspecting licensed facilities in their assigned area at a frequency

determined by the Commissioner, in accordance with Section 35-80-110, C.R.S., and for conducting complaint investigations. The Program has assigned a roughly equal number of 300 to 400 facilities to each inspector. However, the size and terrain of the territories differ. For example, one territory covers the entire western half of the state, while one territory covers the Denver Metropolitan Area and the I-70 corridor to the Kansas border.

Inspections provide an opportunity for the Program to enforce physical facility standards as well as operating procedures. Enforcement actions can range from a civil fine to revocation of a license, depending on the number and severity of violations identified. Our audit examined Program operations for Calendar Year 2014. Since that time, the Program has experienced a number of changes, including moving from the Animal Health Division to the Inspections and Consumer Services Division (Division) within the Department of Agriculture (Department), and having a new Administrator take over the Program. With these changes, the Program has already started moving forward to remedy some of the issue areas addressed in this chapter.

During the audit we evaluated the efficiency and effectiveness of the Program's processes for inspecting facilities and enforcing license requirements, and identified the following four problems: (1) inadequate controls to ensure timely inspections in accordance with Program requirements; (2) ineffective use of enforcement powers; (3) insufficient oversight of the inspection process to ensure consistency; and (4) insufficient guidance related to disclosing conflicts of interest. The remainder of CHAPTER 2 describes our findings and recommendations.

# INSPECTIONS

One of the Program's primary responsibilities is to inspect pet animal care facilities to ensure they are in compliance with statute and Program requirements. Routine inspections are specific to the type of facility (e.g., shelter, groomer, and border), but generally include inspecting for sanitation conditions; enclosure sizes; supervision of pets; overall condition of the facility; and completeness of paperwork, such as disclosures from owners.

Inspectors document their inspections in the pet care portion of the Department's USAHerds database. The database allows inspectors to indicate which rules a facility has been found to have violated during an inspection. It also allows inspectors to see a facility's current risk level, previous inspection reports, and any complaints the facility has received. Inspectors may also go back and update their inspection reports should the facility inform them that a violation was corrected or if the inspector found the violation remedied during a reinspection. The inspectors use USAHerds to create their own work schedule based on the facilities that are due for inspection in their territory. The database also alerts inspectors to any complaints made about facilities in their territory that require investigation.

## WHAT WAS THE PURPOSE OF OUR AUDIT WORK AND WHAT WORK WAS PERFORMED?

The purpose of our audit work was to determine if the Department had implemented sufficient controls over the inspection process to ensure that routine inspections and complaint investigations of pet care facilities are conducted in a timely manner, effectively, and in accordance with Program requirements.

To address our purpose, we reviewed statutes, rules, and Department policies relevant to pet care facility inspections to determine how often

the Department should inspect those facilities. We also interviewed pet care inspectors, the Program's Administrator, and administrative staff to determine the processes used for conducting routine inspections and complaint investigations. Additionally, we analyzed all of the pet care licenses in the Department's database that were active as of January 2015, a random sample of 20 pre-license inspections, a random sample of the most recent routine inspections for 45 facilities, and a random sample of investigation reports for 20 of the 163 complaints (12 percent) submitted to the Department in Calendar Year 2014 regarding pet care facilities.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Department rules [8 CCR 1201-11(10)(A)] give the Program the authority to inspect facilities prior to issuing a license and routinely thereafter, as well as when a complaint is filed against a facility. The Department established the following policies and procedures related to the timeliness of the inspection process.

- **ROUTINE INSPECTIONS.** The Program developed a risk-based system for conducting routine inspections of pet animal care facilities. At the time of licensure, the Program assigns each facility a base risk category from Medium-High to Low that is based on the type of facility. Each base risk category has an assigned interval for inspections based upon the date of initial licensure or the most recent inspection. These intervals range from 12 months for Medium-High risk facilities, to 24 months for Low risk facilities. According to Program policies, inspections should occur within 3 months of the required interval. Exhibit 2.1 shows the assigned inspection interval for the base risk category for each type of facility licensed by the Department.

EXHIBIT 2.1 PET ANIMAL CARE FACILITIES BASE LICENSE RISK CATEGORY AND INSPECTION INTERVALS BY TYPE OF FACILITY		
MEDIUM-HIGH <sup>1</sup>	MEDIUM	LOW
12-MONTH INSPECTION CYCLE	18-MONTH INSPECTION CYCLE	24-MONTH INSPECTION CYCLE
Bird Breeder, Uncommon	Cat Breeder	Animal Rescue
Dog Breeder, Small Scale	Bird Breeder, Common	Retail Aquarium Only
Dog Breeder, Large Scale	Small Animal Breeder	Pet Handler
Animal Shelter	Network Boarding	
Retail/Wholesale	Grooming	
Boarding Training		

SOURCE: Pet Animal Care Facilities Act Program policies and procedures.  
<sup>1</sup>No facility type has a base risk of High. High risk facilities are only identified through the inspection process.

As shown, no facility type is designated as High risk upon initial licensure. However, facilities can be moved up to the High risk category based on the number and severity of violations found during the inspection process. According to the Department’s policies, facilities moved to the High risk category should be inspected every 6 months.

- **COMPLAINT INVESTIGATIONS.** Complaint investigations should be initiated within 5 days of the Department receiving a complaint. In the case of allegations that an animal’s health or welfare is at risk, the complaint should be investigated within 24 hours.

In addition, the Department’s standard inspection report template includes a signature line for the facility representative to acknowledge that the inspection was conducted, the results of the inspection, and what actions the facility must take to remedy any violations noted during the inspection. The signature line indicates the Department’s intent to have facility representatives sign inspection reports.

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Department does not have sufficient controls over the inspection process to ensure that it is timely and that

inspections are conducted in accordance with program requirements. Specifically we found:

- **THE DEPARTMENT DOES NOT ALWAYS COMPLETE ROUTINE INSPECTIONS WITHIN THE PRESCRIBED TIMELINES FOR THE ASSIGNED RISK CATEGORIES.** As of January 2015, the Department’s database showed that there were 357 facilities out of 1,839 (19 percent) that were more than 3 months overdue for their routine inspection. Exhibit 2.2 shows the number of overdue inspections by risk category.

EXHIBIT 2.2 NUMBER OF INSPECTIONS OVERDUE BY MORE THAN 3 MONTHS BY RISK CATEGORY AS OF JANUARY 15, 2015 <sup>1</sup>			
RISK CATEGORY	TOTAL NUMBER OF LICENSED FACILITIES IN CATEGORY	NUMBER OF FACILITIES OVERDUE FOR INSPECTION	PERCENT OF TOTAL
High	84	43	51%
Medium-High	913	204	22%
Medium	658	95	14%
Low	184	15	8%
<b>TOTAL</b>	<b>1,839</b>	<b>357</b>	<b>19%</b>

SOURCE: Office of the State Auditor analysis of Pet Animal Care Facility Act Program’s license database.

<sup>1</sup> Our analysis is based on the information and risk categories contained in the Department’s database as of January 2015; changes in risk categories and thus, required inspection intervals are not tracked in the database, and therefore, are not accounted for in this analysis.

Of the 357 overdue inspections, 143 (40 percent) were more than 12 months overdue. The longest period of time that an inspection was overdue was 28 months. This facility was in the High risk category and should have had a routine inspection every 6 months. Exhibit 2.3 shows the number of overdue inspections and the amount of time overdue.

EXHIBIT 2.3 NUMBER OF OVERDUE INSPECTIONS AS OF JANUARY 15, 2015		
NUMBER OF MONTHS OVERDUE	NUMBER OF FACILITIES OVERDUE FOR INSPECTION	PERCENT OF TOTAL
3 to 6 months	81	23%
7 to 12 months	133	37%
13 to 18 months	98	27%
More than 18 months	45	13%
<b>TOTAL</b>	<b>357</b>	<b>100%</b>

SOURCE: Office of the State Auditor analysis of Pet Animal Care Facility Act Program's license database.

- **THE DEPARTMENT DOES NOT ALWAYS CONDUCT COMPLAINT INVESTIGATIONS WITHIN THE PRESCRIBED TIMELINES.** Of the 20 complaint investigations in our sample, 18 (90 percent) were conducted more than 24 hours after the Department received the complaints and 13 (65 percent) were conducted more than 5 days after they were received. There was no information in the complaint files to indicate whether the Department had determined that the allegations constituted a risk to the animals' health and welfare and therefore, whether the complaints should have been investigated within 24 hours of receipt. Therefore, we could not determine the timeliness of complaint investigations that should have occurred within 24 hours.

For the 13 complaint investigations that were conducted more than 5 days after they were received, eight were initiated more than 10 days after the Department received the complaints. The highest number of days between complaint receipt and initial investigation was 47 days.

These 13 complaint investigations identified a total of 19 violations. For example:

- ▶ One of the complaints was investigated 17 days after the Program received a complaint of too many animals located at a rescue. The complaint investigation resulted in two violations, one of which noted that there were 12 dogs on the premises, while only eight were permitted.

- ▶ One of the complaints was investigated 13 days after the Program received a complaint of numerous cats dying from illness and that the foster homes were mixing litters. The inspection identified a violation of a foster home having 11 cats on the premises, while only eight were permitted.
- **THE DEPARTMENT DOES NOT ENSURE THAT FACILITY REPRESENTATIVES ALWAYS SIGN INSPECTION REPORTS.** Of the 79 inspection reports in our sample, including 65 pre-license and routine inspection reports and 14 complaint investigations for which an inspector completed an inspection report, 33 (42 percent) did not include the signature of a representative of the facility. This included:
  - ▶ 20 of the 45 routine inspection reports did not have a signature (44 percent). Of these 20 inspection reports, 15 identified violations such as improper tethering of dogs on grooming tables, an excessive number of animals for a single individual to supervise, and deterioration of walls between enclosures.
  - ▶ 4 of the 20 pre-license inspections did not have a signature (20 percent). One of the pre-license inspections without a signature identified a violation.
  - ▶ 9 of the 14 complaint investigations that generated an inspection report did not have a signature (64 percent). Of these nine inspection reports, six identified violations, including a foster home that housed 11 cats, three more than the allowed limit. This is the same facility we identified as being investigated 13 days after the Department received the complaint.

## WHY DID THESE PROBLEMS OCCUR?

The issues identified occurred because of the following:

- THE DEPARTMENT HAS NOT PROVIDED SUFFICIENT OVERSIGHT OF THE INSPECTION PROCESS TO ENSURE THAT INSPECTIONS ARE COMPLETED IN A TIMELY MANNER. Specifically,
  - ▶ THE DEPARTMENT HAD NOT CONDUCTED A COMPREHENSIVE ASSESSMENT OF THE WORKLOAD DISTRIBUTION AMONG INSPECTORS. Prior to February 2015, the Department had not determined how many inspections each inspector can realistically complete within a given time period (e.g., daily, weekly, monthly), given the size and type of facilities assigned to each inspector, as well as the geographical size of the territories. Currently, the number of facilities assigned to each inspection territory is similar, between 300 and 400, although the geographical size of the territories differs greatly. Exhibit 2.4 contains the five inspection territories and the number of licensed facilities within each.

**EXHIBIT 2.4  
INSPECTION TERRITORIES AND  
FACILITIES WITHIN EACH TERRITORY  
AS OF JANUARY 15, 2015**

TERRITORY	NUMBER OF FACILITIES	PERCENT OF TOTAL
Central Denver Metro-Area and I-70 East	403	22%
Northeast	367	20%
Southeast	370	20%
Southwest Denver Metro-Area and Central Mountains <sup>1</sup>	370	20%
Western Slope	329	18%
<b>TOTAL</b>	<b>1,839</b>	<b>100%</b>

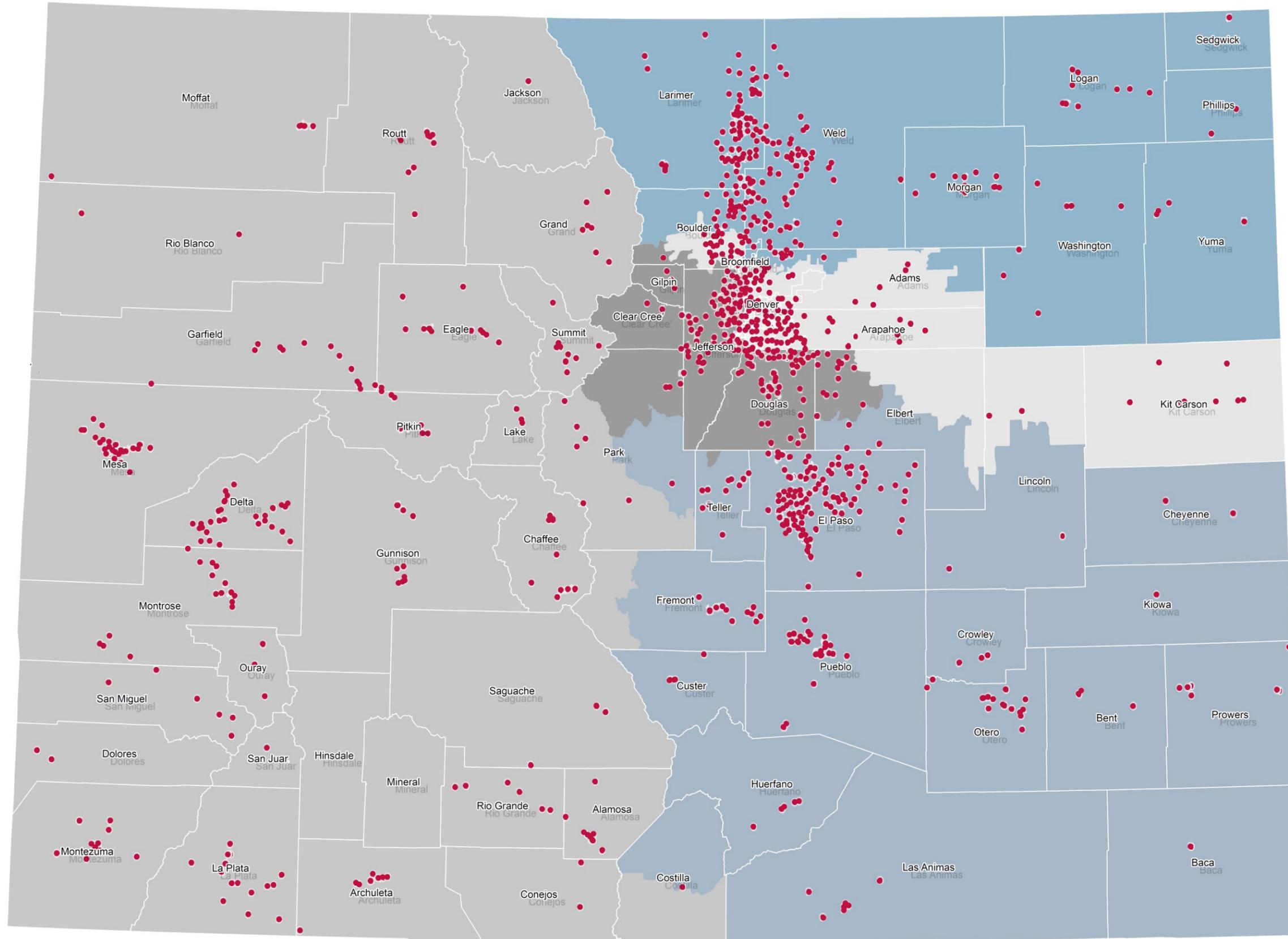
SOURCE: Office of the State Auditor analysis of Pet Animal Care Facility Act Program's license database.

<sup>1</sup> The individual responsible for this area also performs the duties of the lead inspector, which include training new inspectors.

Exhibit 2.5 shows the geographical distribution of the five inspection territories and where the licensed facilities within those territories are located across Colorado.



EXHIBIT 2.5  
LOCATION OF INSPECTION TERRITORIES AND LICENSED FACILITIES JANUARY 15, 2015



KEY:

● Licensed Pet Care Facility.

SOURCE: Pet Animal Care Facility Program.



As Exhibit 2.5 illustrates, the inspector assigned to the Western Slope territory has a much larger geographical area to cover than the inspector assigned to the Denver Metropolitan Area territory. This can have an impact on the number of inspections that can realistically be completed in a day. Prior to February 2015, the Department had not set goals for inspectors related to the number of inspections they needed to complete within a given time period; it was up to the individual inspectors to determine how many inspections they would complete and when. In February 2015, the Department informed inspectors that they should complete two inspections in their assigned territory every day, with the goal of inspecting all licensed facilities within the year.

- ▶ **THE DEPARTMENT HAS NOT MONITORED THE ACTUAL NUMBER OF INSPECTIONS COMPLETED TO ENSURE THAT INSPECTORS ARE CONDUCTING ALL REQUIRED INSPECTIONS WITHIN THEIR TERRITORIES.** The Department has not developed a mechanism, such as reports, to regularly track the number of inspections that have been completed or the status of overdue inspections.
- **THE DEPARTMENT'S LICENSING AND INSPECTION DATABASE, USAHERDS, DOES NOT HAVE THE FUNCTIONALITY TO HELP INSPECTORS EFFICIENTLY MANAGE THEIR WORKLOAD AND INSPECTION SCHEDULE.** Specifically:
  - ▶ **THE DATABASE DOES NOT HAVE A MECHANISM TO LINK INSPECTION DUE DATES WITH FACILITY LOCATIONS.** This functionality would allow the inspectors to conduct multiple inspections in the same area as the due date draws near. To date, the individual inspectors have been responsible for determining their own workload and schedule for conducting inspections. According to staff, the inspectors query the Department's database to determine which inspections in their territory are overdue or will be due in the near future and then plot a travel plan to complete those inspections. For the inspectors in territories covering the larger, more rural parts of the State, travel time and distance are major factors in determining their weekly schedules.

▶ THE DATABASE DOES NOT TRACK HISTORICAL INFORMATION RELATED TO A FACILITY'S ASSIGNED RISK CATEGORY AND PREVIOUS VIOLATIONS FOR INSPECTORS TO CONSIDER WHEN PRIORITIZING THEIR INSPECTION SCHEDULE. Instead, a facility's assigned risk category will revert back to the default base risk category for that type of facility with each new license year. For example, a grooming facility, which has a "Medium" default base risk category, may be reassigned to the "High" risk category one year due to the number and severity of violations found during a routine inspection. However, the following year, the database will automatically reassign the facility back to its "Medium" default base risk category. If the Program did not inspect the facility within the 6-month interval required for High risk facilities before the facility reverted back to its default base risk category, there would be no indication in the database that the Program failed to conduct the inspection within prescribed time frames. A facility's risk level can only increase during a license year based on violations, and will not revert back to the base risk category even after the violations are corrected until the following license year. There is also nothing in the database to indicate readily that the facility was categorized as higher risk in the prior year or to inform the inspector of the number and nature of violations identified previously. Although inspectors can find this information by looking at electronic or hard copies of prior inspection reports, this information is not always available from the field and covers a limited number of previous years' reports. Of the 45 files we examined, which included both electronic and hard copies, in testing recent inspections:

- ▶ 9 did not have previous inspection reports (20 percent).
- ▶ 30 had only one previous inspection report (67 percent).
- ▶ The oldest inspection report in the database was from 2011.

This lack of information makes it difficult for inspectors to set their priorities for the higher risk facilities that need inspection in their territories.

- **THE DEPARTMENT DOES NOT TRACK WHICH COMPLAINTS ARE CONSIDERED HIGHER PRIORITY.** Although the Department’s policies indicate that complaints alleging that an animal’s health and welfare are at risk should be investigated within 24 hours, USAHerds does not track which complaints meet this criteria. Further, the Department does not track this information separately from the database. According to the Department, if the Program Administrator determines that a complaint should be investigated more quickly, he will send an email informing the inspector to investigate the complaint within 24 hours. However, the Department does not document these instances and therefore, cannot monitor inspectors’ compliance with the 24-hour requirement.
  
- **THE DEPARTMENT’S POLICIES DO NOT ADDRESS FACILITY SIGNATURES.** Although the inspection report form includes a signature line for the facility representative to sign the form, inspectors are not required to obtain the signature. The Department has a similar requirement in one of its other inspection programs, but for this Program, the Department does not have any other mechanisms in place to substantiate that the inspection occurred and that the facility representatives have been informed of the inspection results.

## WHY DO THESE PROBLEMS MATTER?

Failing to conduct timely and regular inspections of facilities can result in a loss of public trust in both the Department and the industry. The Program’s mission is “to protect the health and welfare of pet animals while they reside in pet care facilities in Colorado.” The public relies on the Department to provide sufficient oversight of pet animal care facilities in the State to help ensure that the facilities comply with the health and safety requirements established by the Pet Animal Care Facilities Act. If facilities are not inspected regularly, there is a risk that violations could go unidentified and unchecked for a long period of time, leading to illness or injury for pets in the care of a facility. Unsanitary facilities or facilities housing more than the allowed

number of animals could also pose health and safety risks to the general public.

In addition, not having a mechanism for tracking previous complaints that the Program Administrator determined posed an immediate threat to an animal's health or welfare, results in a loss of record that could assist in future decisions. For instance, a facility may have multiple complaints against it that were previously determined to be immediate threats to an animal's health and welfare. However, without that historical perspective the Program cannot easily make assessments about incoming complaints on that facility, nor what might have been a high priority complaint previously.

Finally, when the Program conducts inspections, if facility representatives do not sign the inspection reports or if there is not some other mechanism in place to substantiate that the inspections occurred, there is a risk that inspectors could file the reports without having actually completed the inspection, especially under circumstances when numerous inspections are past due. Further, there is no acknowledgement by the facility that they are aware of the inspections results or know what they must do to remedy any violations.

# RECOMMENDATION 1

The Department of Agriculture (Department) should improve oversight of the inspection process to ensure that inspections are completed in a timely manner, effectively, and in accordance with Pet Animal Care Facilities Act Program (Program) requirements by:

- A Conducting a comprehensive assessment of the workload distribution among inspectors that takes into account the size and type of facilities assigned to each inspector, as well as the geographical size of their territories. Using the results of the assessment, the Department should establish realistic goals for inspectors on the number of inspections they must complete within a given time period to meet Program requirements.
- B Developing a mechanism for regularly monitoring the actual number of inspections completed, the number of inspections that are overdue against those that are required, and the timeliness of inspections and complaint investigations. This mechanism should then be used to assist in developing workload distribution and expectations for a more efficient inspection process.
- C Assessing whether its licensing and inspection database, USAHerds, can be modified to provide a mechanism to link inspection due dates with facility locations, track historical information related to each facility's risk category and the violations previously identified, and track the timeliness of complaint investigations. If feasible, the Department should modify the database to provide this information, or if not, the Department should develop other ways to track and use these data when scheduling and conducting inspections.
- D Implementing mechanisms to substantiate that inspections occur and that facility representatives have been notified of the inspection results. For example, inspectors could be required to sign an attestation on the completed inspection report or to obtain

signatures from facility representatives on inspection reports acknowledging the inspections were completed and their responsibility to remedy any violations identified.

## RESPONSE

### DEPARTMENT OF AGRICULTURE

A AGREE. IMPLEMENTATION DATE: DECEMBER 2016.

We have assessed each inspector's workload, and have discontinued the Risk-Based Model for conducting routine inspections. We have developed and implemented new Program goals and measures for the inspectors to inspect all licensed facilities once per year. We are continually assessing and measuring the Program goals to evaluate and measure effectiveness. These Program goals are monitored by the Program Administrator monthly, and measured through productivity reports in USAHerds.

We will continue to assess inspector workload and territories to measure the most effective and efficient distribution of facilities for each inspector.

B AGREE. IMPLEMENTATION DATE: DECEMBER 2016.

We have changed the Lead Inspector's duties to include daily review of inspection reports as part of her job responsibilities to ensure inspections are being monitored for quality and timeliness. We will continue to assess inspector workload and territories to measure the most effective and efficient distribution of facilities for each inspector.

We have also implemented a process for the Program Administrator to review inspection reports weekly to ensure the Program inspection goals are met.

C AGREE. IMPLEMENTATION DATE: JUNE 2016.

The Department of Agriculture is currently in the process of implementing Ag Licensing, an online licensing program. An enforcement and inspection database is a component of the Ag Licensing program.

The new license and inspection database is expected to allow for better scheduling of inspections and improved access and retrieval of historical data, including inspection history, frequency, and disciplinary actions for the inspectors, Program, and Department.

D AGREE. IMPLEMENTATION DATE: FEBRUARY 2015.

As stated in the responses to Recommendations 1(A) and 1(B), monitoring mechanisms are now in place to make sure inspections are being completed and reviewed for quality and timeliness.

A process has been implemented and training has been provided to ensure that inspection reports are provided to the facilities at the time of inspection. Violations and the process for compliance are discussed with the facility owner or manager prior to departure. This process and protocol are addressed and included in the Operations Manual.

# ENFORCEMENT

Through the authority of the Commissioner, the Program has multiple enforcement tools that can be used together to enforce pet care facility regulations. First, in accordance with statute [Section 35-80-113, C.R.S.], any facility violating statute or rules is subject to a civil penalty determined by the Commissioner; this penalty cannot exceed \$1,000 per violation. Based on Program policies, these violations could be direct, indirect, repeat direct, or repeat indirect. Direct violations are defined in policy as “directly affect[ing] the health and welfare of animals residing in a facility.” All other violations are classified as indirect, and can include things such as incomplete or inadequate paperwork, inadequate food and water storage, and poor ventilation or lighting. Civil penalties cannot be imposed unless a facility is given notice and an opportunity for a hearing. If a facility fails to pay all or a set portion of the penalty, or if the Commissioner is unable to collect the civil penalty, the Commissioner may bring suit to recover the amount plus costs and attorney fees by action in court, or refuse to renew any license.

Second, the Commissioner may take more restrictive measures, which can be used in conjunction with civil penalties. According to statutes [Sections 35-80-111, 35-80-112, and 35-80-113, C.R.S.], the Program, acting on behalf of the Commissioner, may issue cease-and-desist orders, temporary restraining orders, and letters of admonition. Should a facility fail to comply with a cease-and-desist order, the Commissioner is given authority to bring suit for a temporary restraining order and injunctive relief to prevent the continuation of the violation. The Program can also deny, suspend, refuse to renew, restrict, or revoke any license for a number of reasons including:

- Refusal or failure to comply with any statutory provision, rule, or order of the Commissioner.
- Denial, revocation, or suspension of an equivalent license.
- Falsified information.
- Failure to pay civil penalties.

The Program has also begun using stipulations as a means of informing facilities of possible pending actions should the facility not remedy violations. According to the Department, the majority of stipulations are used to inform facilities of failure to renew a license due to non-payment. However, they can also be used to allow for informing the facility of the need to remedy a violation before issuing a civil penalty.

Exhibit 2.6 details the enforcement actions taken by the Department from March 1, 2010 through the last day of February 2013, which is the most recent data the Program had available. The Department's license year runs from March 1st to the last day of February.

EXHIBIT 2.6 NUMBER AND TYPE OF ENFORCEMENT ACTIONS AND CIVIL PENALTIES LICENSE YEARS 2010-2013 <sup>1</sup>					
TYPE OF ACTION	2010	2011	2012	2013	PERCENT CHANGE
Injunctive Relief	1	1	0	0	-100%
Stipulations	128	61	88	83	-35%
Cease-and-Desist Orders <sup>2</sup>	40	20	11	9	-78%
License Denied or Revoked <sup>2</sup>	5	2	4	2	-60%
Civil Penalties <sup>3</sup>	\$13,060	\$16,324	\$7,534	\$3,450	-74%

SOURCE: Pet Animal Care Facilities Act Program Annual Reports.

<sup>1</sup> The most recent data available are through the 2013 License Year, which ended the last day of February 2014.

<sup>2</sup> Cease-and-Desist Orders and License Denied or Revoked could be for violations identified during inspections or the result of facilities operating without a license. However, the Department was unable to break out the amount attributable to each.

<sup>3</sup> This amount may include both late fees charged to licensees who did not renew their license in accordance with Program deadlines as well as civil penalties assessed for violations noted during inspections. The Department was not able to break out the amount attributable to each.

## WHAT WAS THE PURPOSE OF OUR AUDIT WORK AND WHAT WORK WAS PERFORMED?

The purpose of our audit work was to determine whether the Department has sufficient controls in place to ensure that it takes appropriate enforcement action when violations are identified through routine inspections or complaint investigations.

To address our purpose, we reviewed statutes, rules, and Department policies relevant to pet care facility inspections to determine what type of enforcement actions the Department is authorized to take to ensure that facilities correct the violations identified during inspections. We also interviewed Program staff to determine the process for administering enforcement actions for violations identified. Additionally, we reviewed a random sample of 45 of the 1,839 pet care facility licenses (2 percent) active as of January 2015.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Statutes [Sections 35-80-109(2)(d) and 35-80-112(1), C.R.S.] give the Commissioner the power to establish rules that detail the grounds for disciplinary actions against pet animal care facilities. Department rule specifies that, “[t]he [C]ommissioner may issue letters of admonition, deny, suspend, refuse to renew, restrict, or revoke any license due to a failure on 3 reinspections for an original violation within any 12 month period,” [8 CCR 1201-11-10(B)]. According to the Department’s policies, a facility may fail an inspection for any of the following reasons:

- Evidence of multiple violations that directly and immediately affect an animal’s health and welfare.
- Failure to allow access to an inspector to conduct either a routine inspection or complaint investigation.
- Repeat direct violations.

Additionally, statute grants the Commissioner the authority to issue a civil penalty, not to exceed \$1,000 per violation, upon any license holder for violating statute or Department rules [Section 35-80-113(1), C.R.S.]. Department policies state that inspectors have the authority to recommend to the Commissioner that civil penalties be imposed for violations. The policies provide inspectors with discretion when determining whether to recommend civil penalties and state that “[e]ach violation is to be examined on an individual basis for risk to animal health and welfare.” The amount of civil penalties that

inspectors may recommend, as established by Department policy, is detailed in Exhibit 2.7. The Department’s policy does not specify whether these violations must occur within a prescribed time period for the penalties to be imposed.

EXHIBIT 2.7 ELIGIBLE AMOUNT OF CIVIL PENALTIES PER VIOLATION		
	INDIRECT	DIRECT
1st Violation	No Fine	\$250 or more up to \$1,000
1st Repeat Violation	One-half facility license fee <sup>1</sup>	\$250 or more up to \$1,000 & Possible probationary period attached to license
2nd Repeat Violation	Two times the first fine imposed for an indirect violation & Possible probationary period attached to license	\$500 or more up to \$1,000 & Possible cease-and-desist order
3rd and Subsequent Repeat Violations	Two times the second fine imposed for an indirect violation up to \$1,000 & Possible cease-and-desist order	\$500 or more up to \$1,000 & Possible cease-and-desist order
SOURCE: Pet Animal Care Facilities Act Program policies and procedures. <sup>1</sup> License fees range from \$175 to \$400, depending upon the type of facility.		

In addition to issuing civil penalties for violations, Department rule states that if a facility does not meet the statutory requirements or the rules for the Program, then the licensee must submit a written correction report within 20 days of receiving the inspection report [8 CCR 1201-11-10(B)]. The Department’s policies state that inspectors will conduct a follow-up inspection whenever a facility is non-compliant; however, the Department’s policy does not define what constitutes a “non-compliant facility.” Inspectors can determine how soon to conduct the follow-up inspection depending on their judgment of the violation’s severity.

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Department does not effectively utilize its enforcement powers to ensure licensees correct violations. Specifically, we found:

- **THE DEPARTMENT DOES NOT ISSUE PENALTIES WHEN INSPECTORS IDENTIFY VIOLATIONS.** Inspectors identified violations during routine inspections at 36 of the 45 facilities in our sample (80 percent). For these 36 facilities, there were a total of 106 violations, including 30 direct and 76 indirect violations. The Department did not issue civil penalties, letters of admonition, license suspensions, or license revocations for any of the 36 facilities even though some of these facilities had multiple violations that the inspectors determined directly affected the health and welfare of the animals in the facilities. For example:
  - ▶ One facility, licensed as a groomer, trainer, and boarder, had 10 violations, three of which were classified as direct violations and seven that were classified as indirect violations. The violations included having a dog on a grooming table that was tethered but unsupervised, comingling animals, and failing to follow proper sanitizing procedures. According to the Department’s policy, this facility could have been fined up to \$3,000 in civil penalties, \$1,000 for each direct violation. The Department did not issue any civil penalties.
  - ▶ One facility, licensed as a groomer, had three repeat direct violations, including using a tightening tether on a dog in a grooming area and detergents near the bathing area; one facility, licensed as a boarder and a trainer, had two repeat direct violations, including improper sheltering from the elements and comingling of dogs without permission or supervision; and two facilities, both licensed as a boarder and trainer, each had one repeat direct violation, both of which concerned having too many animals inside an enclosure. According to the Department’s policy,

in total, these facilities could have been fined up to \$7,000 in civil penalties and had their licenses placed on probationary status. The Department did not issue any civil penalties and did not place any of the facilities' licenses on probationary status.

- **THE DEPARTMENT DOES NOT ROUTINELY CONDUCT REINSPECTIONS OR OBTAIN CORRECTION REPORTS WHEN VIOLATIONS ARE IDENTIFIED.** Specifically:
  - ▶ 36 of the 45 inspection reports (80 percent) in our sample identified at least one violation, and 8 (18 percent) of these inspections identified five or more violations. However, the Program only required a reinspection for four facilities.
  - ▶ 28 of the 36 inspection reports (78 percent) in our sample that identified at least one violation did not contain evidence that a correction report was filed by the facilities. For the eight correction reports that were filed, three were filed more than 20 days after the facility received the inspection report.

## WHY DID THESE PROBLEMS OCCUR?

The issues we identified relating to enforcement occurred because the Department has not established adequate rules, policies, and automated tools to guide the Program's disciplinary process. Specifically:

- **THE DEPARTMENT'S RULES AND POLICIES GRANT INSPECTORS DISCRETION RATHER THAN REQUIRING SPECIFIC DISCIPLINARY ACTIONS BE TAKEN, EVEN WITH MORE SERIOUS OFFENDERS.** Given its complete discretion with respect to disciplinary decisions, the Department reports that in recent years, it has attempted to work with facilities to remedy violations rather than enforcing penalties against the facilities. According to the Department, this approach not only encourages a more collaborative relationship between inspectors and licensees, but it also increases the amount of time inspectors have to spend on inspections because they are not

spending time on enforcement actions. Program staff stated that issuing fines required them to focus on collections rather than inspections and taking actions against a licensee required extensive and costly legal effort from the Department and the Attorney General's Office. Therefore, from 2011 to 2013, the amount of civil penalties collected by the Department decreased 79 percent, from \$16,300 in 2011 to \$3,450 in 2013. However, statute [Section 35-80-106 (4), C.R.S.] gives the Commissioner the authority to refuse to renew a license for failure to pay an outstanding civil penalty and all licensed pet care facilities must renew their licenses each year. Refusing to renew licenses when civil penalties are not paid would reduce the amount of time inspectors spend collecting fines.

- **CERTAIN PROVISIONS IN DEPARTMENT RULES AND POLICIES ARE NOT CLEARLY DEFINED AND CANNOT REALISTICALLY BE ENFORCED.** For example:
  - ▶ **REINSPECTIONS.** The Department has not developed a mechanism for using a risk-based approach to conducting reinspections that considers the severity of the violations identified, the facility's history of non-compliance, and whether the facility submitted required correction reports. Policies currently state that a reinspection is required for every non-compliant facility. Although the policy does not define what constitutes a "non-compliant facility," Program staff have interpreted this to mean a facility where they find a violation, regardless of the number or severity level of the violations. Based on this interpretation, Program staff have stated that it is not feasible or an effective use of resources to conduct a reinspection every time a violation is found due to resource constraints. As discussed, 80 percent of the facilities in our sample had inspections that identified at least one violation. Conducting a reinspection for all of these facilities would require significantly more resources.
  - ▶ **LICENSE REVOCATION.** Rules authorize the Commissioner to revoke a facility's license if the facility fails three reinspections in a 12-

month period. The likelihood that the Department would conduct three reinspections in addition to the original inspection within a 12-month period, however, is very low. As discussed previously, overall, the Department is behind on routine inspections for 19 percent of licensed facilities. This is especially true for High risk facilities which are more likely to have serious violations; over 50 percent of the facilities categorized as High risk are more than 3 months overdue for a routine inspection, which should be occurring every 6 months. In addition, as discussed above, the Department does not consistently conduct reinspections even when direct repeat violations are found. Therefore, requiring three failed reinspections in a 12-month period for a single facility as a standard for revocation may not be an effective enforcement tool.

- **DEPARTMENT RULES AND POLICIES DO NOT REQUIRE INSPECTORS TO DOCUMENT CORRECTION REPORTS OR THE CORRECTIVE MEASURES TAKEN BY FACILITIES.** Although facility owners are required to submit a written correction report when the Department determines that the facility has not complied with statutes and Program rules, the Department does not require that inspectors maintain those correction reports in facility files. Inspectors are required to submit an amended inspection report to indicate when a facility corrects a violation and whether the inspector identified those corrections through a reinspection or correction report. However, there is no requirement that the inspector document what measures the facility took to remedy the violation. For the 28 inspections in our sample where a correction report was required, but was not included in the facilities' files, we could not determine whether the facilities had either submitted correction reports that had subsequently been omitted from the file, or if the facilities had not submitted correction reports at all. Further, we could not determine what measures the facilities took to remedy the violations.
- **PROGRAM STAFF MUST MANUALLY TRACK WHEN CORRECTION REPORTS ARE DUE.** The Department's licensing and inspection database, USAHerds, does not automatically calculate and notify

inspectors when correction reports are due. Instead, it is up to the individual inspectors to manually track this information.

- **THE DEPARTMENT DOES NOT TRACK INFORMATION ON PREVIOUS ENFORCEMENT ACTIONS.** USAHerds does not contain information regarding actions that may have been taken against facilities due to violations identified in prior inspections. Therefore, the inspectors cannot access this information remotely from the field. Further, according to the Department, it does not track this information separately outside of USAHerds. As a result, inspectors have no way of knowing the history of enforcement actions taken against a specific facility, especially if that individual is new to the inspection position. This information, if available, could impact an inspector's decision to take enforcement action against a facility during the current inspection.

## WHY DO THESE PROBLEMS MATTER?

The purpose of the Program is to protect the safety and well-being of pets. The issues identified in the Department's rules and policies limit its ability to effectively enforce the provisions of the Pet Animal Care Facilities Act. By not taking enforcement actions against facilities that fail to meet Program requirements, the Department is not as effective as it could be in ensuring that pet care facilities are safe. Currently, there is little or no incentive for facilities to correct the violations identified by inspectors. By allowing facilities to continue to operate in an unsafe manner without repercussions, the Program is not fulfilling its purpose.

Additionally, by not enforcing penalty provisions, the Department creates an unequal playing field for those in the industry. Some facilities go to great effort and expense to ensure that they comply with all Program requirements. By allowing some facilities to violate those requirements without repercussions, the Department is not treating all facilities equitably.

## RECOMMENDATION 2

The Department of Agriculture (Department) should strengthen the effectiveness of the Pet Animal Care Facilities Act Program (Program) and hold facility owners accountable for correcting violations by:

- A Developing written guidelines and procedures on how and when to issue penalties to ensure enforcement actions are applied consistently and appropriately. This should include guidance on pursuing enforcement actions against facilities that fail to comply following the issuance of civil penalties, and refusing to renew licenses for facilities that fail to pay civil penalties in accordance with statute.
- B Amending rules and policies to provide greater flexibility to revoke a license for repeat violations.
- C Implementing a risk-based approach for conducting reinspections, including written guidance to define what constitutes a “non-compliant” facility.
- D Using the improvements to the database or alternate methods recommended in RECOMMENDATION 1C to track previous enforcement actions taken against facilities as well as when correction reports are due, if they have been received on time, and how facilities reported correcting violations.

## RESPONSE

### DEPARTMENT OF AGRICULTURE

- A AGREE. IMPLEMENTATION DATE: JULY 2015.

Operations and Training Manuals have been developed to ensure consistency in inspections and complaint investigations and for

training new inspectors in performance expectations and Program goals. The Operations Manual includes guidance on enforcement actions, including issuing civil fines for non-compliance and implementing a more streamlined process for commencing civil actions in court for violations of Program requirements.

The manuals are in the final review stages with implementation planned for July 2015.

**B AGREE. IMPLEMENTATION DATE: JUNE 2016.**

We will look at rules to help the Program have more direct enforcement options. We have currently implemented a more straightforward process of utilizing civil fines to address non-compliant facilities and to address direct and/or repeat violations.

We are providing guidance to inspectors to use the available enforcement tools faster by implementing a more streamlined process to issue cease-and-desist orders, license denial and/or license revocation to facilities that fail to comply or can't meet facility rules and standards.

**C AGREE. IMPLEMENTATION DATE: MARCH 2015.**

The Operations Manual provides a more consistent definition of non-compliance and guidance for inspectors regarding following up on reinspections of direct and indirect violations. A process has been implemented within the USAHerds database for inspectors to track the facilities that are due for reinspections. This process also ensures that inspectors are communicating more efficiently with facilities that are past due and need to submit correction plans.

**D AGREE. IMPLEMENTATION DATE: JUNE 2016.**

The Department is currently in the process of implementing Ag Licensing, an online licensing program. An enforcement and inspection database is a component of the Ag Licensing program.

The new license and inspection database is expected to allow for better access and retrieval of historical data, including but not limited to correction plan due dates; report submittal data; and previous disciplinary actions and activities for the inspectors, Program, and Department.

# PROGRAM MANAGEMENT

The Program is organizationally and geographically located within the Division, which is currently located in Denver. The Program Administrator and administrative staff work out of that office. However, the five Program inspectors work from home offices within or near their respective inspection territories.

Inspectors are responsible for conducting inspections, creating inspection reports, providing those reports to facility owners, and entering inspection reports into the Department's database, USAHerds. The database contains fields for each of the sections of the rules relating to facility standards (e.g., physical facility standards, cleaning and sanitation, classification, and separation), and inspectors can select the proper violation and classify any violation as direct or indirect. Inspectors also have the ability to amend inspection reports if corrections are made and to designate a facility as either compliant or non-compliant based on the outcome of an inspection or based on a correction report or reinspection.

## WHAT WAS THE PURPOSE OF OUR AUDIT WORK AND WHAT WORK WAS PERFORMED?

The purpose of our audit work was to evaluate whether the Department has established sufficient controls and provided sufficient oversight to ensure that routine inspections and complaint investigations are effective and handled consistently across the state.

To address our purpose, we interviewed pet care facility inspectors, the Program's Administrator, and administrative staff regarding the Program's operations. We analyzed all of the pet care facility licenses in the Department's database that were active as of January 2015, as

well as a random sample of 45 routine inspections, 20 investigation reports from complaints regarding pet care facilities, and 20 pre-licensing inspections conducted on facilities seeking to obtain a license. We also reviewed statutes, rules, and policies, as well as best practices concerning the Program and general program management.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Statute [Section 35-80-109, C.R.S.] authorizes the Commissioner “to administer and enforce the provisions of [the Pet Animal Care Facilities Act] and any rules and regulations adopted pursuant thereto.” Overall, the Division, which oversees the Program, states that its primary goal is the “promotion of equity in the marketplace, and animal and human health and safety.” According to the Program, its mission is to protect the health and welfare of pets residing in pet care facilities. The Program strives to fulfill this mission by conducting routine inspections, conducting investigations of complaints, establishing standards of pet care in the industry, and educating facility owners.

In order for the Program to be effective in its efforts to complete its mission, it is important that the Program provide inspectors with clear parameters and standards with which to perform their inspection and enforcement duties and conduct a centralized review of the results of inspections in order to provide continuity across the inspection areas statewide.

## WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Department has not established sufficient controls or provided sufficient oversight to ensure that inspections and enforcement actions are consistent among inspectors and that all pet care facilities are treated equitably across the state. Department rules and policies for the Program provide for a great degree of discretion

on the part of inspectors to make determinations about the type and severity of the violations they identify during inspections and the type of enforcement actions that should be taken. It is reasonable to afford inspectors some degree of discretion; however, the Department has not established sufficient standards to ensure that inspectors use the same basis for making decisions about the severity of violations, the need for a reinspection, and passing or failing an inspection. Specifically, we found:

- **INSPECTORS DO NOT CONSISTENTLY CLASSIFY VIOLATIONS AS DIRECT OR INDIRECT.** In our review of 45 routine inspections, we identified similar violations that inspectors found at different facilities but that were classified differently as direct or indirect violations in the separate inspection reports. For example:
  - ▶ One inspection classified a cleaning and sanitation violation as a direct violation, while two other inspections classified the same violation as indirect.
  - ▶ One inspection classified a veterinary care violation as a direct violation, while another inspection classified the same violation as indirect.
- **INSPECTORS DO NOT CONSISTENTLY CONDUCT REINSPECTIONS OR FAIL FACILITIES.** In our sample of 45 routine inspections, 36 (80 percent) identified at least one violation, with eight inspections identifying five or more violations. However, inspectors conducted a reinspection for four facilities and failed three facilities. Exhibit 2.8 shows the eight inspections, the number of direct and indirect violations found during each inspection, whether the inspector required a reinspection, and whether the facility failed the inspection. This exhibit shows that whether or not an inspector conducted a reinspection or failed a facility appears inconsistent across inspections. For instance, one inspection (H) identified 10 total violations, three of which were classified as direct violations, but the inspector did not require a reinspection and the facility did not fail the inspection. Conversely, another inspection (G) identified five total violations, four of which were classified as

direct violations, and in this instance the inspector required a reinspection and failed the facility.

EXHIBIT 2.8 FOR FACILITIES IN SAMPLE WITH 5 OR MORE VIOLATIONS THAT REQUIRED REINSPECTIONS AND FAILED INSPECTIONS AS DETERMINED BY ASSIGNED INSPECTORS					
FACILITY	DIRECT VIOLATIONS	INDIRECT VIOLATIONS	TOTAL VIOLATIONS	REINSPECTION REQUIRED?	FAILED INSPECTION?
A	5	1	6	Y	Y
B	3	4	7	N	N
C	0	5	5	N	N
D	0	7	7	Y	N
E	1	7	8	N	N
F	0	5	5	N	N
G	4	1	5	Y	Y
H	3	7	10	N	N

SOURCE: Office of the State Auditor analysis from a sample of facility inspection reports.

- **NO EVIDENCE OF SUPERVISORY REVIEW OF INSPECTIONS.** The Department has not provided supervisory review of inspections and enforcement actions to verify that they have been conducted appropriately and consistently across all inspectors. Of the 85 inspections in our sample, none showed evidence of supervisory review.

## WHY DID THESE PROBLEMS OCCUR?

The issues we identified relating to program management were primarily due to a lack of clearly defined policies and procedures for the Program. Specifically:

- **THE DEPARTMENT'S POLICIES DO NOT PROVIDE A CLEAR FRAMEWORK FOR CLASSIFYING VIOLATIONS AS DIRECT OR INDIRECT.** The Department's policies define a direct violation as one that directly affects the health and welfare of animals residing in a facility and an indirect violation as one that involves aspects of the facility or its operation that does not have a direct impact on animal well-being. It is left to each individual inspector to decide if a violation should be classified as direct or indirect. The checklist developed by the Program for use by inspectors when conducting

inspections provides some guidance for which violations are direct or indirect, yet those may not always be clear. For instance, an improper tethering practice, which may lead to an animal choking, is categorized on the list as an indirect violation even though it could directly impact the health and welfare of an animal.

- **THE DEPARTMENT’S POLICIES ARE UNCLEAR AS TO WHEN REINSPECTIONS SHOULD OCCUR.** Department policies currently state that a reinspection is required for every non-compliant facility. However, the policy does not define what constitutes a “non-compliant facility.” According to Program staff, their understanding of the policy is that a facility is non-compliant if any violation is found during an inspection, regardless of the number or severity level of the violations. Since it is not feasible given limited resources for inspectors to conduct a reinspection every time a violation is found, inspectors indicated that they have disregarded this policy.
  
- **THE DEPARTMENT POLICIES DO NOT DEFINITELY SAY WHEN A FACILITY SHOULD FAIL AN INSPECTION.** Instead the Department’s policies provide guidance for when a facility *may* fail an inspection, including when there is:
  - ▶ Evidence of multiple violations that directly and immediately affect an animal’s health and welfare.
  - ▶ Failure to allow access to an inspector to conduct either a routine inspection or complaint investigation.
  - ▶ Repeat direct violations.

Inspectors have interpreted this guidance differently. In our sample, there were seven facilities that had more than one direct violation. However, inspectors only failed three of them. Additionally, the sample included four inspections that identified repeat direct violations, but inspectors only failed one of those facilities.

- **THE DEPARTMENT’S POLICIES ARE SILENT WITH RESPECT TO SUPERVISORY REVIEW.** Although the job descriptions for the Lead Inspector and Program Administrator positions state that these positions are responsible for supervisory review, the Department’s policies and procedures do not say when this supervisory review should occur or how it should be conducted.

## WHY DO THESE PROBLEMS MATTER?

Without clear parameters for classifying violations and enforcing the provisions of the Pet Animal Care Facilities Act when violations are identified, and without a central review process to ensure that inspections occur within those parameters, the Program runs the risk of being inconsistent and ineffective. This inconsistency can create an uneven playing field for facilities when inspectors interpret and enforce Program requirements differently. It can also lead to a lack of clarity among the industry with respect to Program requirements. This in turn can lead to the public’s lack of confidence in the Program and as a result, undermine the Program’s overall goal of keeping pets and people healthy and safe. Additionally, if the Program is not consistent statewide in its inspection and enforcement decisions, this could make it difficult to defend its decisions if challenged through legal action.

## RECOMMENDATION 3

The Department of Agriculture (Department) should improve controls and oversight over the pet animal care facility inspection process by:

- A Clarifying policies that provide the framework within which inspectors conduct inspections, classify violations, and enforce the provisions of the Pet Animal Care Facilities Act. This should include more clearly defining what constitutes a direct versus indirect violation; non-compliant facility and thus, when a reinspection is required; and failed inspection.
- B Implementing policies requiring supervisory review of inspections that are geared toward ensuring that like violations are treated equitably across inspection areas. This could include establishing a risk- or random- basis for conducting reviews in order to ensure coverage of all license types and all inspection areas around the state.

## RESPONSE

### DEPARTMENT OF AGRICULTURE

- A AGREE. IMPLEMENTATION DATE: JULY 2015.

Operations and Training Manuals have been developed to ensure consistency in inspections and complaint investigations and for training new inspectors in performance expectations and program goals. The Operations Manual provides a more consistent definition of non-compliance and failed inspections and provides guidance for inspectors regarding following up on reinspections of direct and indirect violations.

The manuals are in the final review stages with implementation planned for July 2015.

B AGREE. IMPLEMENTATION DATE: JULY 2015.

Operations and Training Manuals have been developed to ensure consistency in inspections and complaint investigations. These manuals will provide guidance to inspectors to ensure that violations are being cited equitably and consistently across each inspection territory.

We have changed the Lead Inspector's duties to include daily review of inspection reports as part of her job responsibilities to ensure inspections are being monitored for quality and timeliness.

Enforcement actions, i.e., civil fines, cease-and-desist orders, and failed inspections, are reviewed by the Inspector, Lead Inspector, and Program Administrator to determine disciplinary actions against licensees.

# CONFLICTS OF INTEREST

State employees are entrusted with carrying out the effective and efficient operation of state government. Ethics plays an important role in a state employee's ability to serve the public. Ethical standards and controls have been developed for state employees through both the Independent Ethics Commission and the Department of Personnel & Administration. The requirements and guidelines laid out by these offices create the framework from which state agencies operate to ensure impartiality and uphold public trust. The Program falls within the state agencies to which these rules and guidelines apply.

Inspectors are responsible for inspecting facilities in or near areas of the state where they live and do business. Many of the inspectors have some background in animal care and it is reasonable to assume that many of them are pet owners or have connections to people that own or operate pet care facilities. As such, providing guidance to these staff on what constitutes an actual or perceived conflict of interest and information on how to disclose these situations when they occur provides Program management with the controls needed to operate an inspection program that retains the confidence of the industry and customers of pet care facilities.

## WHAT WAS THE PURPOSE OF OUR AUDIT WORK AND WHAT WORK WAS PERFORMED?

The purpose of our audit work was to determine whether the Department and the Program have sufficient controls in place to protect against actual and perceived conflicts of interest for Program staff responsible for conducting and supervising inspections.

To address our purpose, we reviewed statutes and the Program's rules, policies, and procedures to determine what measures the Department had in place to identify and mitigate conflicts of interest or unethical

behavior by inspectors. We also interviewed inspection staff to gain an understanding of the Department's practices in this area as well as the staff's previous and current interests with the animal care industry. Additionally, we reviewed best practices for regulation programs of a similar nature to address existing and prevent future conflicts.

## HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

The Colorado Code of Ethics and Standards of Conduct [Section 24-18-104, C.R.S.], states that public employees must act impartially and avoid real or perceived conflicts of interest. A conflict of interest is defined as an action of a public official or employee that results in or creates the appearance of (1) using his or her office for personal benefit, (2) giving preferential treatment to any person or entity, (3) losing independence or impartiality, or (4) accepting gifts or favors for performing official duties.

In addition, statutes prohibit state employees from engaging in outside employment or other activities that create a conflict of interest with their duties as state employees, including any substantial financial transactions with entities that the employee inspects, regulates, or supervises [Sections 24-50-117 and 24-18-108(2)(a), C.R.S.]. Further, Department of Personnel & Administration rules and Executive Orders for state employees require that outside employment be approved by an employee's supervisor. These rules and orders emphasize that state employees should avoid conflicts, or the appearance of conflicts, to prevent adverse effects on public confidence in government. Therefore, state employees must demonstrate independence, impartiality, and integrity when performing job duties to ensure all inspections are carried out equitably, consistently, and without bias.

As such, Department policies require all employees to submit a disclosure form if they want to enter into outside employment or if they believe that a conflict of interest exists.

Best practice in the animal care facility inspection industry is to have conflict of interest policies in place. The Federal Animal and Plant Health Inspection Agency, which enforces the Animal Welfare Act and inspects facilities similar to those inspected by the Program, such as breeders and commercial pet retailers, requires employees to file a confidential financial disclosure report both at the time of hire and annually if questions of impartiality arise while they are fulfilling their duties or if they exercise discretion as part of their duties. Employees are educated on conflicting financial interests and impartiality at the time of hire and annually thereafter.

## WHAT PROBLEM DID THE AUDIT WORK IDENTIFY?

We found that the Department did not receive conflict of interest disclosures for any of the Program's inspectors or the Program Administrator, all of whom are responsible for conducting inspections and/or reviewing inspection results and making enforcement decisions. Just prior to being hired by the Department, one recently hired staff member worked for two separate businesses that are currently licensed by the Program. Although we did not find that the individual allowed this prior employment relationship to influence decisions made in his current position, there may be an appearance of a conflict of interest. The formal disclosure of this prior relationship by the employee and recognition by Department management would help provide assurance that the potential conflict has been addressed.

## WHY DID THE PROBLEM OCCUR?

Neither the Department nor the Program has implemented effective controls to identify and mitigate actual or perceived conflicts of interest for inspection staff. Specifically:

- **INSUFFICIENT GUIDANCE FOR ENSURING DISCLOSURE OF CONFLICTS OF INTEREST.** The Department does not have sufficient guidance in place to identify and address potential conflicts of interest for inspection staff. The Department's current policy related to

conflicts of interest applies to all Department staff, regardless of job duties. This policy requires staff to fill out a memo when the staff person plans to engage in outside employment or believes that a conflict may exist. However, the Department does not have guidance in place specifically related to inspection staff, such as those with the Program. There is no policy requiring inspection staff to disclose whether they previously worked for a business that they are assigned to inspect, or preventing them from inspecting businesses where they, or members of their household, have or previously had a financial or personal interest. Additionally, the Department does not provide guidance to help inspection staff identify any relationships that may pose an actual or perceived conflict of interest. Examples of potential conflicts for staff could include inspectors or members of their household receiving favors from the facilities they inspect; inspectors licensing facilities owned and/or operated by a member of their household that are not in compliance with Program rules; or inspectors allowing their personal beliefs to influence the outcome of an inspection. However, it is up to the Department to determine which, if any, of these scenarios would constitute a conflict of interest.

- **LACK OF TRAINING REGARDING STATE REQUIREMENTS FOR PREVENTING CONFLICTS OF INTEREST.** Program inspection staff indicated that they have not received training from the Department related to identifying and disclosing actual or potentially perceived conflicts of interest. According to the Department, when needed, they reference the Standards of Conduct in statute, [Section 24-18-101, et. seq., C.R.S.], but this statute, or a reference to it, is not included in Department policies and staff do not receive training on how they should apply it in their roles as inspectors.

## WHY DOES THE PROBLEM MATTER?

Department inspection staff are in a unique position because they have direct regulatory authority over private businesses. By not providing guidance and training to staff on identifying and disclosing actual or perceived conflicts of interest, the Department cannot ensure that

inspection staff understand the types of situations and relationships that should be disclosed, nor can it minimize the opportunity for there to be a perception of conflicts. The lack of adequate guidance regarding conflicts of interest creates a risk for misuse of authority, inequitable treatment of facilities, and a potential public perception of bias on the part of the inspectors and the Program overall.

## RECOMMENDATION 4

The Department of Agriculture should ensure that the Pet Animal Care Facilities Act Program (Program) inspection staff follow ethical standards and the Program adequately address conflicts of interest by developing guidance for inspection staff on identifying and preventing conflicts of interest from affecting their official duties and disclosing conflicts when they occur and providing training to staff on this guidance.

## RESPONSE

### DEPARTMENT OF AGRICULTURE

AGREE. IMPLEMENTATION DATE: JULY 2015.

Ethical standards and conflicts of interest are addressed in the Department's employee orientation.

Operations and Training Manuals have been developed to ensure that training is provided regarding conflicts of interest and ethical standards. These manuals will have guidance for inspection staff on identifying and preventing conflicts of interest from affecting their official duties and disclosing conflicts when they occur.

The manuals are in the final review stages with implementation planned for July 2015.

Future training will also provide guidance to staff on conflicts of interest.



# APPENDIX



OFFICE OF THE STATE AUDITOR  
SUMMARY OF FINDINGS RELATED TO  
THE SMART GOVERNMENT ACT  
PET ANIMAL CARE FACILITIES ACT PROGRAM  
DEPARTMENT OF AGRICULTURE  
JUNE 2015

The SMART Government Act [Section 2-7-204(5)(a), C.R.S.] requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments. These audits may include, but are not limited to, the review of:

- The integrity of the department’s performance measures audited.
- The accuracy and validity of the department’s reported results.
- The overall cost and effectiveness of the audited programs or services in achieving legislative intent and the department’s goals.

The performance audit relating to the Department of Agriculture’s (Department) Pet Animal Care Facilities Act Program (Program) was selected for focused audit work related to the SMART Government Act. This document outlines our findings related to the integrity and reliability of performance measurement for the Program. We have presented our findings as responses to six key questions that can assist legislators and the general public in assessing the value received for the public funds spent by the Program.

*What is the purpose of this program/service?*

According to the Program, its mission is to, “protect the health and welfare of pet animals while they reside in pet care facilities in Colorado. This will be achieved through educating facility owners, monitoring facility standards with routine inspections, and responding to complaints or inquiries by the public with investigations.” Through statute [Section 35-80-105, C.R.S.], the Department has implemented a licensing and inspection process aimed at ensuring all facilities that fall under the Act are registered and inspected on a regular basis.

*What are the costs to the taxpayer for this program/service?*

For Fiscal Years 2010 through 2014, the Department's annual revenue and expenditures averaged around \$600,000. The Program is funded primarily from license fees.

*How does the Department measure the performance of this program/service?*

The Department's Fiscal Year 2015 performance plan did not contain goals or performance measures for the Program. At the time of our audit, Program staff indicated that an internal goal was to ensure that all the facilities overdue for inspections were completed. Our review of the Program's database showed that as of January 2015, there were 357 facilities out of 1,839 (19 percent) that were more than 3 months overdue.

*Is the Department's approach to performance measurement for this program/service meaningful?*

The SMART Government Act [Section 2-7-202(18), C.R.S.] includes several requirements to ensure that departments' performance measures are meaningful. Specifically, performance measures included in departments' performance plans are required to:

- Be quantitative indicators used to assess the operational performance of a department.
- Apply to activities directly under the influence of a department.
- Demonstrate the department's efficiency and effectiveness in delivering goods or services to customers and taxpayers.
- Be reasonably understandable to the general public.

Although the Department's performance measures for the Program are not included in the Strategic Plan the Department prepared in accordance with the SMART Government Act, the criteria provided above can be used as guidance for establishing meaningful performance measures.

The Department's internal goal of completing all overdue inspections is a short-term goal that was created to address the issue of overdue inspections.

The Department has not developed more comprehensive long-term performance measures to assess the effectiveness of the Program on an ongoing basis. The Program's primary functions are to license and inspect facilities, and take enforcement action on facility violations when appropriate. As discussed in RECOMMENDATION 1, however, we found that the Department could improve its controls for ensuring that inspections are conducted in a timely manner. Specifically, we found that the Program fell further behind in inspections by not having accountability measures in place and not having database system controls in place to ensure inspections were getting done and that inspectors were efficient in conducting inspections by linking locations with due dates. Beginning in 2015, the Program stated that its goal was to move away from risk-based inspections wherein some facilities were inspected every 6 months and others every 2 years, and move toward having every facility inspected every year. At the time of this audit, the success of this goal is unclear, as is whether or not it provides for the most efficient and effective use of staff. By establishing additional performance goals, strategies and measures, the Department can improve its ability to demonstrate the effectiveness of the Program and better inform policy-makers and the public.

*Are the data used to measure the performance of this program/service reliable?*

We assessed the Department's data and found that for purposes of measuring its performance, the data are accurate. However, as we note in CHAPTER 2, the Department could improve the functionality of its database or implement a new process to ensure that the time and resources of inspectors are efficiently used, that enforcement actions are tracked, and that review of inspections is conducted to ensure completeness and consistency.

*Is this program/service effective in achieving legislative intent and the Department's goals?*

As discussed in CHAPTER 2, we found that the Department can improve its efforts to achieve the Program's mission of protecting the health of animals within pet care facilities. In January 2015, we found that 357 of the 1,839 facilities licensed with the Program (19 percent) were overdue for inspection. Additionally, we found that 13 of the 20 complaint investigations (65 percent) in our sample were conducted more than 5 days after the Department received

the complaint. We also found that the Department was not enforcing penalties against facilities that had violations, especially those with repeat violations, and that overall, the Department had not provided sufficient oversight to ensure that inspections and enforcement actions are consistent among inspectors and that all pet care facilities are treated equitably. Accordingly, in RECOMMENDATION 1, we recommend that the Department establish realistic goals for the number of inspections they must complete to meet program requirements. In RECOMMENDATION 2, we recommend that the Department develop guidance for pursuing enforcement actions and a systematic means to track enforcement actions to ensure facilities comply with the requirements of the Program. Additionally, in RECOMMENDATION 3, we recommend that the Department improve its oversight of the Program and clarify policies that provide a framework for conducting inspections and enforcing the Pet Animal Care Facilities Act. Lastly, in RECOMMENDATION 4, we recommend that the Program implement guidance for identifying and mitigating real and perceived conflicts of interest, which could be detrimental to the effectiveness of the Program should its integrity be called into question.

# GLOSSARY



## TERMS

### *Act*

The Pet Animal Care Facilities Act. Sections 35-80-101 through 117, C.R.S.

### *Advisory Committee*

Consists of 17 appointed members, who serve 3-year terms to advise the Commissioner on the regulation of the pet care industry and provide ongoing review of statutes.

### *Commissioner*

The Commissioner of Agriculture. The Commissioner has the power to administer and enforce the Act.

### *Department*

The Department of Agriculture. The Pet Animal Care Facilities Act Program was established under the Department of Agriculture in 1994 under Senate Bill 94-23.

### *Direct Violation*

A violation that directly affects the health and welfare of animals residing in a facility.

### *Division*

The Inspections and Consumer Services Division within the Department that administers the Program.

### *Indirect Violation*

A violation that involves aspects of the facility or its operation that does not have a direct impact on the animals residing in the facility.

### *License Year*

The Program's license year runs from March 1<sup>st</sup> to the last day of February.

### *Pet Animal*

Defined in Section 35-80-102(10), C.R.S. as, “[D]ogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates, or any other species of wild or domestic or hybrid animal sold,

transferred, or retained for the purpose of being kept as a household pet.” Animals that are livestock or used for working purposes on a farm or ranch are not included under the Act.

*Program*

The Pet Animal Care Facilities Act Program, a licensing and inspection authority within the Department of Agriculture, Division of Inspection and Consumer Services.

ABBREVIATIONS

FTE

Full-Time Equivalent (staff).

SMART Government

State Measurement for Accountable, Responsive, and Transparent Government Act.

USAHerds

Animal Health Emergency Reporting Diagnostics. The database used by inspectors.



