

Department of Agriculture

Measurement Standards Program

Performance Audit
September 2024
2360P



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KERRI L. HUNTER, CPA, CFE • STATE AUDITOR

September 18, 2024

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Measurement Standards Program within the Department of Agriculture. The 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, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the Department.

Kerri L. Hunter



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Report Highlights

Measurement Standards Program

Department of Agriculture

Performance Audit • September 2024 • 2360P



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Key Concern

The Inspection and Consumer Services Division (Division) within the Department of Agriculture (Department) could improve its management of data collected on licensed devices and inspections under the Measurement Standards Act (Act). It can also improve processes around its scale inspections and price verification inspections, taking enforcement action when inspections identify violations of laws, rules, and requirements by licensees, and responding to complaints it receives from the public.

Key Findings

- The Division could not identify the number of licensed devices or licensed locations that need to be inspected each year due to a lack of controls in its database.
- In Calendar Year 2023, there were at least 3,434 licensed devices across 636 businesses in the state that were not inspected. Statute requires that licensed devices are inspected at least once every 12 months.
- From Calendar Year 2019 through 2023, the Division did not have data or documentation verifying that 23 of 39 (59 percent) businesses in our sample had repaired or removed scales from commercial use following an inspection that identified a failed device.
- The Division did not issue civil penalties to any of the 40 businesses in our sample that failed inspections.
- For 28 of the 40 (70 percent) inspection reports in our sample, the reports did not include complete or consistent information on why a business failed an inspection, and whether the nature or degree of the failure warranted an enforcement action.
- For 7 of 35 complaints (20 percent) received in Calendar Years 2022 and 2023, the Division did not have documentation to show that the Division conducted a routine or complaint investigation at the associated businesses after the complaints were filed.
- The Division conducted inspections for 21 complaints it received. However, 16 of the 21 inspections (76 percent) did not occur until between 31 days and 425 days after the complaint was received.

Background

- The Division is responsible for licensing and inspecting devices used to weigh and measure products available for retail purchase as well as conducting inspections to ensure the accuracy of retail prices.
- The Division has 5 programs consisting of 13 different inspection types, including weights and measures, egg, feed and fertilizer, and others. However, weights and measures are the only inspections that are statutorily required on an annual basis [Section 35-14-127(3), C.R.S.].
- The Division uses a database system called AgLicense to store licensing, inspection, and payment data. Businesses submit their applications and license renewals through AgLicense, and Division staff can update license information and create inspection records in the AgLicense system.

Recommendations Made

11

Responses

Agree: **11**

Partially Agree: **0**

Disagree: **0**



Chapter 1

Measurement Standards Overview

The Measurement Standards Act (Act), administered by the Department of Agriculture (Department), establishes requirements for devices that are used to weigh and measure products available for retail purchase and retail prices. Specifically, “[b]efore operating any scale, textile meter, or cordage meter for commercial purposes...the owner shall first procure from the department a license for the operation of the device” [Section 35-14-127(1), C.R.S.]. Statute further requires the Department to “test or cause to be tested for accuracy every scale, textile meter, or cordage meter for which the owner has been issued a license to operate at least once every twelve months or more often if necessary” [Section 35-14-127(3), C.R.S.]. Statute also specifies requirements for retail prices, specifically that “[n]o person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person” [Section 35-14-111, C.R.S.].

Administration, Organization, and Oversight

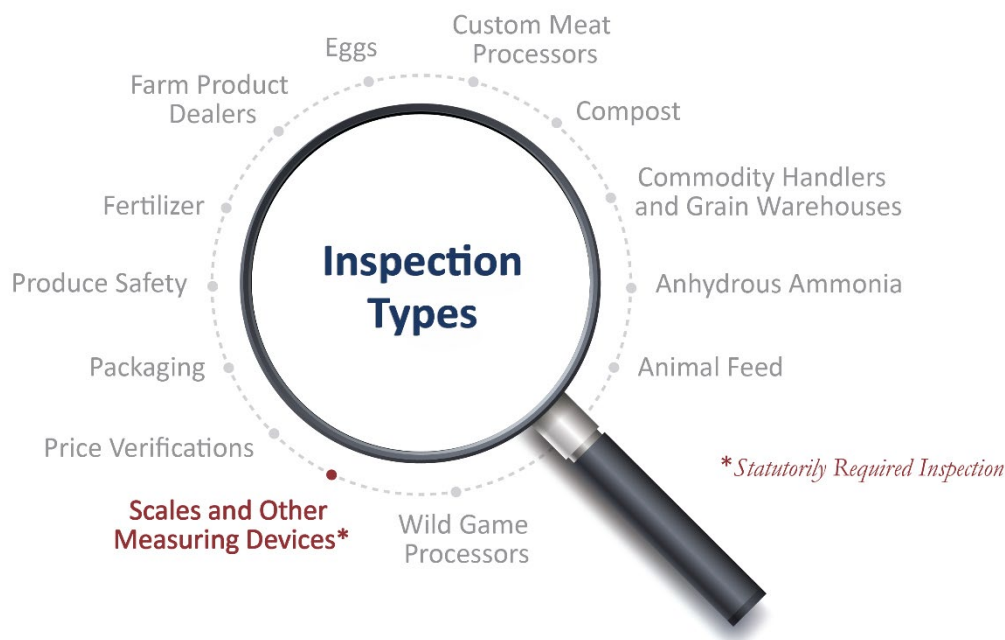
Department Structure

The Department is overseen by the Commissioner of Agriculture (Commissioner), and the Act specifies that “[t]he commissioner shall administer and enforce the provisions of [the Act] and shall have and may exercise any and all of the administrative powers conferred upon the head of a department of the state...The powers and duties given to and imposed upon the commissioner are also given to and imposed upon the deputies and inspectors when acting under the instructions and at the direction of the commissioner.” [Section 35-14-106, C.R.S.]. This enables the Commissioner, as head of the Department, to delegate the administration and enforcement of the Act to the inspectors and administrators in the Inspection and Consumer Services Division (Division) of the Department. The Measurement Standards Program (Program) that is responsible for weights and measures inspections is a part of the Division.

The Division is comprised of several units: Technical Services Work Unit, Field Services Work Unit, Agricultural Worker Services, Produce Safety, and Fruit and Vegetable Inspection. The Technical Services Work Unit is responsible for managing 5 programs consisting of 13 different inspection types, including scales and other measuring devices, price verification, egg inspections, feed and fertilizer inspections, and several others. The inspectors within the Field Services Work Unit conduct the inspections detailed in Exhibit 1.1. Out of the 13 inspection types that these inspectors

perform, the only inspections that are statutorily required on an annual basis are weights and other measuring device inspections [Section 35-14-127(3), C.R.S.].

Exhibit 1.1
Division of Inspection and Consumer Services
Inspection Types



Source: Office of the State Auditor graphic of inspection types completed by the Division of Inspection and Consumer Services.

These 13 inspection types are conducted by the Division's Field Services Work Unit, which has 14 inspectors who are responsible for conducting all 13 inspection types shown in Exhibit 1.1. The total full-time equivalent (FTE) of those involved in these Division units are:

- **Technical Services Work Unit Staff:** One unit manager, five program managers (includes the Measurement Standards Program manager), two compliance specialists, and three licensing staff who are responsible for the licensing of weights and measures devices. (11 FTE) Program managers provide instructions to inspectors in the Field Services Work Unit on the completion of inspections for their corresponding programs.
- **Field Services Work Unit Staff:** One unit manager and 14 field inspectors who are responsible for performing inspections to ensure that licensees for the five programs within the Technical Services Work Unit comply with statutory and federal requirements. (15 FTE) The unit manager is responsible for overseeing all of the inspectors and all of the inspection types they conduct, including weights and measures. Some of the 14 field inspectors are also work leads, who assist with supervisory review of the field inspectors' work.

National Institute for Standards and Technology

The National Institute of Standards and Technology (NIST) is a federal non-regulatory agency that publishes the national weights and measures standards used by Program staff during inspections and at the state-level metrology labs. Statute requires that the Division use NIST technical guidance in administering the Program [Section 35-14-105(1), C.R.S.]. Statute outlines that “the definitions of basic units of weights and measures, the tables of weights and measures, and the equivalents of weights and measures, as published by the national institute of standards and technology, are recognized and shall govern weighing and measuring equipment and transactions in this state” [Section 35-14-103, C.R.S.]. In total, there are 10 NIST Handbooks; statute, the NIST State Laboratory Program, and internal policies require the Division to follow four of the handbooks [Section 35-14-105, C.R.S. and Standard Operating Procedure, Section 7.3.5, Inspection]. NIST also publishes an additional handbook that includes best practices for state program administration. The five Handbooks establish accuracy and correctness requirements for weighing and measuring devices that are used by the Program for weights and measures devices, pricing, and program administration. Accuracy requirements determine if the scale is measuring a good within acceptable tolerances and correctness requirements ensure the device is the proper measuring device for the materials based on certain factors, such as the size of scale should correlate to the size of the good it is measuring.

State Metrology Laboratory

The Department has a Metrology Laboratory that is responsible for certifying, weights and other test equipment used by Program staff in conducting their inspections. The State’s Metrology Lab certification standards are periodically sent to NIST to be referenced and checked for compliance against NIST standards by NIST staff.



Department of Agriculture’s Metrology Laboratory.
Photo Credit: OSA Staff

Regulatory Activities

The Act requires that the Program license and inspect commercial measuring devices, as well as reject devices that are inaccurate and do not comply with statute.

Licensing and Certifications

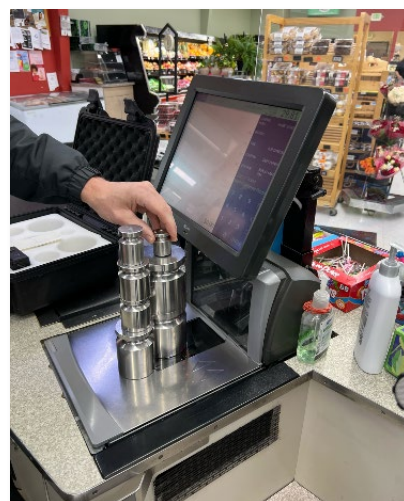
State rule requires that all commercial measuring devices are licensed annually [Section 8 CCR 1202-2(6)]. Program staff issue the following types of licenses and certifications related to the use and servicing of commercial measuring devices:

- **Commercial Devices:** Statute requires the Program to license all measuring devices used commercially, such as grocery store scales, produce scales, self-checkout scales, and shipping scales [Section 35-14-127, C.R.S.]. Businesses obtain a license by submitting a weights and measuring devices application and paying an annual fee for each device for every year the device is used commercially.
- **Device Service Providers:** Statute requires the Program to certify companies that service devices, known as device service providers (provider) [Section 35-14-123(1), C.R.S.]. Servicing a commercial measuring device can include repairing a device or recalibrating a device so that it measures accurately. Providers submit to the Program an application, a fee, and proof of certification of weights and measures standards that demonstrate that the weights it uses are accurate during the licensing process. There are approximately 45 device service providers in the state.

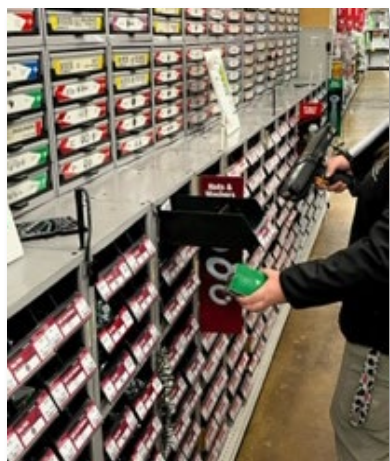
Inspections

For the Measurement Standards Program, there are three categories of inspections:

- **Device Inspections:** These inspections test all commercially-used devices for accuracy and compliance with statutory and associated national standards. Device inspections can test small or large measuring devices. Small devices are those that have smaller weight capacities, like self-checkout scales at grocery stores. Large devices are scales with capacities greater than 1,001 pounds, such as railroad and vehicle scales. Grocery scales, marijuana scales, and truck scales were the three most common types of scales inspected by the Division in Calendar Years 2019 through 2023, according to the Division's data.



Grocery store checkout scales are an example of commercially-used devices that are inspected for accuracy and compliance.
Photo Credit: OSA Staff



An inspector conducts a Price Verification Inspection. Photo Credit: OSA Staff

- **Price Verification Inspections:** For price verification inspections, inspectors select a sample of products across several areas of the store and verify if those products ring up for the price displayed on the shelf. Inspectors can use a handheld scanner gun that checks the price, or the scanner at the check stand at the front of the store. These inspections enforce the provision of the Measurement Standards Act that prohibits the misrepresentation of prices.

- **Invoice Inspections:** Invoice inspections are not required by statute or rule, but involve the inspectors going to a municipality or law enforcement agency to conduct an inspection of a device that is not used for commercial purposes. In these instances, the law enforcement agency or municipality pays the Program for an inspection. One example of invoice inspections includes evaluating Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) devices used to weigh recipients. Another example is inspecting water meters at municipalities to ensure that the meters are accurately measuring the amount of water being used and that consumers are paying companies correctly for their water usage.



Water meter inspection. Photo Credit: OSA Staff

Inspection Areas

After the Division has processed the business applications for commercial measuring device licenses each year, the Division creates inspector territories from the list of licensed businesses. To create territory assignments, the Field Services Unit management considers factors such as geographic spread of a territory, travel time, and types of inspections that are required per location. Each inspector has an inspection map in Google Maps that shows the businesses they need to inspect and the businesses with completed inspections.

Data Systems

The Program uses a database system called AgLicense to store licensing, inspection, and payment data. Businesses submit their applications and license renewals through AgLicense, and Program staff can update license information and create inspection records in the AgLicense system. Business owners and personnel who work with the Program may also submit secure payments using AgLicense. Inspection records in AgLicense store account identification numbers, addresses, dates, inspector names, the purpose of the inspection, and the outcome of the inspection. Inspectors also attach inspection reports to these inspection records. The inspection reports contain details of inspections, such as which scales at a business passed or failed inspection, the error of each device, and the inspector's comments and notes. AgLicense contains certain user-generated report features that export the data. These user-generated reports include the Territory Management Report, which the Program uses to export inspector maps, and the Commercial Device Summary report, which summarizes the types of devices that have passed and failed inspections.

Audit Purpose, Scope, and Methodology

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. Audit work was performed from December 2023 through August 2024, and we appreciate the cooperation and assistance provided by Department and Program management and staff.

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

Our key audit objectives were to assess whether the Department conducts inspections under the Measurement Standards Program according to statutory requirements and associated national standards and whether it takes appropriate enforcement actions when violations occur. The audit also looked at the Department's complaint process and whether it meets statutory and nationally established standard requirements.

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

- Reviewed applicable laws; rules; national standards; and Division policies, procedures, and guidance.
- Interviewed Program staff and management to obtain an understanding of the Program and inspection processes.
- Conducted site visits to four stores in urban and rural counties to interview staff and observe inspectors conducting scale and price verification inspections; conducted site visits to 2 entities to observe inspectors conducting invoice inspections; and visited the Department's metrology lab for a walk-through of its operations.
- Reviewed civil penalties issued by the Program in Calendar Years 2019 through 2023 to determine if consistent enforcement action has been taken.
- Reviewed service provider reports submitted to the Program during Calendar Years 2019 through 2023 and matched provider reports to failed inspection reports to determine if the Division followed up on failed devices.

- Surveyed 13 of the Division’s inspectors who work on weights and measures inspections to understand how inspectors receive training and manage workloads; received responses from 13 inspectors. One of the 14 inspectors was on extended leave.
- Analyzed aggregate complaint data submitted to the Division and maintained in a Google spreadsheet and/or the AgLicense system for Calendar Years 2019 through 2023 to determine if the Division responded to complaints.
- Analyzed aggregate licensing and inspection, and complaint data from AgLicense for Calendar Years 2019 through 2023. This included data on licensed measuring device, price verification, and invoice inspections.
- Reviewed the inspection reports in a random sample of 40 inspection records from the population of all device inspection records for Calendar Years 2019 through 2023 to determine if measuring devices were tested again within 12 months as required by statute [Section 35-14-127(3), C.R.S.].
- Reviewed an additional random sample of 40 failed inspection records from Calendar Years 2019 through 2023. We assessed whether each of the inspection reports associated with these records included evidence that supported the outcome of the inspections, including any enforcement action taken by the inspector such as issuing a civil penalty, and documentation demonstrating that the scale was repaired. We reviewed this information to determine if the Division’s enforcement actions were consistent and effective.

The results of our non-statistical samples cannot be projected to the population. However, the sample results are valid for confirming the noncompliance of inspection and enforcement processes, and along with our other audit work performed, provide sufficient, reliable evidence as the basis for our findings, conclusions, and recommendations.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Details about the audit work supporting our findings and conclusions, including any deficiencies in internal control that were significant to our audit objectives, are described in the remainder of this report.

A draft of this report was reviewed by the Department. Obtaining the views of responsible officials is an important part of the Office of the State Auditor’s (OSA) commitment to ensuring that the report is accurate, complete, and objective. The OSA was solely responsible for determining whether and how to revise the report, if appropriate, based on the Department’s comments. The written responses to the recommendations and the related implementation dates were the sole responsibility of the Department.



Chapter 2

Measurement Standards Program

In administering the Measurement Standards Act (Act), the Measurement Standards Program (Program) is responsible for three major functions: the inspection of licensed scales, price verification inspections, and the enforcement of required standards for accuracy. These functions contribute to the Division of Inspection and Consumer Services' (Division) goals of consumer protection and promotion of equity in the marketplace. Inspections can occur on a regular basis, such as the required annual inspections of scales and other commercial measuring devices, or in some cases, such as price verification inspections, they can occur as the Program Manager determines to be necessary. Both types of inspections can also occur in response to a complaint the Division receives from the public or other sources, such as the Attorney General's Consumer Protection Section.

The Division's inspectors visit businesses that use scales or other measuring devices to test the functionality of each licensed measuring device to ensure accurate and consistent measurements. Inspectors use weights that are calibrated annually at the Department of Agriculture's (Department) Metrology Lab. The inspectors place these weights on the scale used by the business and, using standards set by the National Institute of Science and Technology (NIST), record the readings and any deviations from those standards. If the inspector finds that a scale is in compliance with NIST standards, they will attach an approval sticker to the licensed device.



Inspectors with the Department of Agriculture's Division of Inspection and Consumer Services attach an approval sticker to licensed scales or other measuring devices that comply with NIST standards. Photo Credit: OSA Staff

If the inspector finds that a scale is out of compliance with NIST standards, statute requires the business to repair the scale within 30 days or another reasonable amount of time as determined by the Commissioner of Agriculture [Section 35-14-124(1), C.R.S.]. If the inspector finds that a device is out of compliance with NIST standards, the inspector will attach either a blue or red tag to the device, which indicates how much the scale was out of compliance.

A **blue tag** indicates that the device needs minor repairs and can still be used commercially, but that the business must repair the device within 30 days or replace it.



WORK ORDER

COLORADO DEPARTMENT OF AGRICULTURE
MEASUREMENT STANDARDS PROGRAM
305 Interlocken Parkway, Broomfield, CO 80021
(303) 869-9090

This device has been tested and found to be out of tolerance or otherwise in need of repair.

Pursuant to Section 35-15-124(1) C.R.S. This device shall be repaired within 30 days from the date below or this device shall be removed from commercial use.

SN/DID: _____

OWNER: _____

ADDRESS: _____

Inspector: _____

Date: _____

DO NOT REMOVE OR DEFACE WITHOUT PERMISSION OF THE COLORADO DEPARTMENT OF AGRICULTURE

CONDEMNED

COLORADO DEPARTMENT OF AGRICULTURE
MEASUREMENT STANDARDS PROGRAM

This device has been tested/inspected and found to not comply with the Colorado Measurement Standards Act. This device is CONDEMNED and shall immediately be removed from commercial service.

Condemnation is for one or more of the following reasons:

- ☐ Device exceeds allowed tolerance limits for accuracy
- ☐ Device does not have NTEP Cert. of Conformance
- ☐ Other violation pursuant to 35-14-C.R.S.

SN/DID _____ User _____

Address _____

Inspector _____ Date _____

DO NOT REMOVE OR DEFACE, without permission of the Colorado Dept. of Agriculture under **PENALTY OF THE LAW, Title 35, Article 14 - C.R.S.**

A **red tag** indicates that the device is significantly out of compliance and the business must remove the device from commercial use immediately and repair it or potentially replace it.



Inspectors create inspection reports for each inspection that they conduct in the Department's AgLicense database system, which the Division also uses to process new and renewed licenses. The inspection report in AgLicense includes information, such as the count of devices at the business that passed and failed the inspection, the types of violations identified, whether any warnings were issued to the business, inspector comments, and a line for the inspector and business to sign the report. After the inspector completes their report, they send a copy of the inspection report to the business.

As part of the Program, the Division also conducts price verification inspections under guidelines set by NIST, in which an inspector visits a retail business to verify the accuracy of price representations made by the business, including in advertisements and price tags. During these price verification inspections, the Division's inspectors select a random sample of items for sale at the business, and then check to see if prices ring up at the register for the same prices as listed on the shelf or in advertisements. If the inspector finds prices to be incorrect, the store must fix the price

errors immediately. In the case of a failed price verification inspection, the Division's practice is to continue to conduct price verification inspections every 30 days until the store passes the inspection. Our audit focused on the inspection, enforcement, and complaint functions of the Program and we identified findings in each of these areas. In addition, during the course of our audit work, we identified issues with the completeness, accuracy, and reliability of inspection, enforcement, and complaint data in AgLicense, which are discussed in our first finding.

Finding 1—Data Management and Assessing Program Effectiveness

The Division licenses all commercially-used scales and measuring devices in the state and statute requires the Division to inspect these scales for accuracy at least annually as a part of its goal to protect consumers [Sections 35-14-127(1) and 35-14-127(3), C.R.S.]. The Division can also conduct inspections when it receives public complaints, which can come in from a variety of sources including by email, phone, or an online form on the Division's website. Program staff determine if Division inspectors should conduct a complaint inspection or if Program staff should reach out to the business without a formal inspection.

The Division currently uses a database system called AgLicense to process new and renewed licenses, and to store inspection and licensing records. When inspectors create an inspection record in AgLicense, the system automatically populates the record with the license holder's account ID, address where the inspection occurred, date of the inspection, and inspector's name. Other fields, such as inspection purpose and outcome are selected by inspectors from option menus. Inspectors then attach an inspection form for the specific type of inspection they are conducting. For example, if an inspector is conducting a price verification inspection, they will attach the price inspection form that contains fields for inputting information about the number of items tested and how much of a price difference there was for any tested items that failed inspection. If an inspector is conducting a scale inspection, the inspector will attach a scale test form, which contains fields about each device tested, what type of scale was tested, the scale's capacity, if the scale passed or failed the test, and the error rate of scales that failed inspection.

What audit work was performed and what was the purpose?

The Division provided the audit team with access to AgLicense in order for the team to review licensee accounts and inspection forms. We reviewed aggregate data for scale and price verification inspection records from AgLicense for Calendar Years 2019 through 2023. From that data, we selected and reviewed two, separate samples. The first sample of 40 inspection records included inspections with a variety of outcomes, such as complete, failed, and devices not tested. The second sample of 40 inspection records was pulled from the 2,237 inspection records with failed outcomes, meaning that at least one device tested or two prices were out of compliance with NIST standards during the inspection and could result in enforcement action against the licensee. We selected these

two samples to compare the completeness and consistency of information in the system across forms and assess if the inspection records contained all of the information the Division requires in its inspection forms, such as the Division-created text explaining the violation, the outcome of the inspection, the degree to which the scale deviated from the standard, and any discussions that the inspector had with the business. Enforcement actions taken by the inspector are not required to be entered into AgLicense by Division staff and, instead, Division staff are recording enforcement actions separately in documents stored in a Google Drive at the Program Manager's discretion. In addition, we obtained complaint inspection data from AgLicense for Calendar Years 2019 through 2023 and the Google sheet of complaints the Program Manager maintained for Calendar Years 2022 and 2023 and compared the data in each to determine if the Division investigated weights and measures complaints and the outcome of those investigations. We also interviewed Division staff to assist with our understanding of the data and identify any required or key fields in AgLicense.

The purpose of our audit work was to evaluate the accuracy, completeness, and reliability of the Division's inspection, enforcement, and complaint data.

How were the results of the audit work measured?

Information System Controls and Quality Data Management. Statute requires each state agency, including the Department of Agriculture, to institute and maintain systems of internal accounting and administrative control [Section 24-17-102, C.R.S.]. The Office of the State Controller adopted the *Standards for Internal Control in the Federal Government* (Green Book), published by the U.S. Government Accountability Office, as the State standard for internal controls that all state agencies must follow. The Green Book provides the following key principles related to quality information needed to evaluate the effectiveness of programs:

- “Management should use quality information to achieve the entity’s objectives” [Green Book, Principle 13.01].
- “Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements.” This principle defines reliable sources as those that “...provide data that are reasonably free from error and bias and faithfully represent what they purport to represent.” Principle 13.04 also requires that “Management evaluates both internal and external sources of data for reliability... Management obtains data on a timely basis so that they can be used for effective monitoring” [Green Book, Principle 13.04].
- “Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results” [Green Book, Principle 16.01].

Additionally, NIST, which provides guidance through handbooks for state weights and measures programs, states that “[a]n efficient record system of inspections and enforcement actions is

essential. The information in the records must be analyzed and used as a tool to justify the program, to guide the allocation of resources, to monitor compliance levels in different segments of the commercial marketplace, to monitor compliance levels for retail chains, manufacturers and models of measuring instruments and consumer product packagers, and to monitor the performance of service companies of measuring instruments...Collecting data without analyzing the data is a waste of valuable effort and information” [NIST 155, *Data Management*, Section 24.0].

What problems did the audit work identify?

Overall, we found that the Division does not have complete, accurate, and reliable data related to its inspections, enforcement actions, or complaints, which is essential for tracking performance metrics and effectively managing the Program. Specifically, we found:

The Division could not identify the number of licensed weights and measures devices or licensed locations that need to be inspected each year. AgLicense does not contain an aggregate list of all licensed devices in the state, so the Division cannot determine the number of devices associated with each licensed location without viewing the information in AgLicense manually for each specific location. To determine how many licensed devices are at a particular location, Division staff must open the AgLicense account information page for the location and total the listed licensed devices. In addition to not knowing the number of devices, the Division cannot determine the total number of licensed locations (i.e., businesses that have a licensed device) in the state that are required to be inspected in a given year. The Division could only estimate this number for the most recent year using a report from AgLicense; however, this report duplicates some licensed locations because it is created using business names, and a business that has both a large licensed scale and small licensed scale would appear on the report twice. In addition, the Division cannot use this report to estimate the number of licensed locations in prior years because the report only pulls current licensing data.

The Division cannot identify on an aggregate level which weights and measures devices or licensed locations have been inspected. The Division’s inspection data contains inaccuracies that prevent the Division from identifying key program performance metrics. For example:

- **Number of Locations Inspected.** The Division cannot identify the total number of licensed locations that have been inspected in a given year or any other period of time because AgLicense is unable to differentiate between complete and incomplete inspection forms. Specifically, we found instances in AgLicense where there was an inspection record in the system for a particular licensed location, but when we opened the inspection form, the record was incomplete and there was no information in the record showing that the devices at that location had been tested.
- **Number of Devices Inspected.** The Division cannot identify the number of devices that have been inspected each year or any other period of time. AgLicense has a built-in Commercial

Device Summary Report (CDS Report) that is supposed to be able to show the total number of devices that were inspected during a given period using inspection forms entered by Division inspectors. The CDS Report includes information on the number of devices in and out of compliance for the devices tested, and the devices that were not tested when an inspector was on site. However, we found that the inspection form data in the CDS Report does not appear to be accurate. For example, the CDS Report showed that in Calendar Year 2020, there were 130,039 devices tested and approved by inspectors. According to Division staff, they believe this number was inflated by more than 100,000 since this number did not align with the prior year's

According to Division staff, they believe that this number was inflated by more than 100,000 since this number did not align with the prior year's number of 26,144 devices inspected.

number of 26,144 devices inspected. Specifically, the Division explained that the inflated total could be due to inspector data-entry error or an error in the reporting system. Additionally, the CDS Report shows the total number of devices not tested, but that number does not include licensed devices that were never visited by an inspector because if an inspector

never visited a licensed location, an inspection record would never be created for the CDS Report to pull from. Therefore, the CDS Report does not provide accurate information for the Division to assess the number of devices that still need to be inspected at a given time.

Exhibit 2.1 is the CDS Report for Calendar Years 2019 through 2023 pulled from AgLicense, and shows some of the inconsistencies in the data. For example, the AgLicense data indicated that 20,926 licensed devices were visited by inspectors in 2021 and then increased to 37,685 in 2022. Overall, it is unclear if or why the number of devices increased or decreased significantly from year to year. The Division reported that it does not know why the data shows that the number of devices inspected increased so significantly in 2022. The data also shows another inconsistency when the report states that 27,730 licensed devices were visited by inspectors in 2019 and the number of devices increased to 133,311 in 2020. When asked about the large increase for 2020, the Division reported it was an inspector data entry error, as the inspectors did not inspect an additional 100,000 devices in that year. We could not determine, nor could the Division determine, the actual number of devices visited due to data entry errors and inconsistencies.

Exhibit 2.1

Division-Reported Commercial Device Summary Report of Visited Devices Calendar Years 2019 through 2023¹

Year	Devices Not Tested ²	Devices In Compliance	Devices Out of Compliance	Total Devices Visited by Inspectors	Percentage Change
2019	607	26,144	979	27,730	N/A
2020	2,579	130,039	693	133,311	381%
2021	636	19,589	701	20,926	-84%
2022	1,509	34,638	1,538	37,685	80%
2023	1,175	23,128	1,231	25,534	-32%

Source: Commercial Device Summary (CDS) Report data from AgLicense.

¹The report reflects the numbers Division inspectors input into the CDS Report in AgLicense, but does not reflect the accurate number of devices inspected due to data entry errors and inconsistencies. The CDS report does not contain a column for the devices tested and therefore is not included in this chart.

²“Devices Not Tested” is the number of devices recorded when an inspector creates an inspection report for a business they visited but were unable to inspect the device – for instance, if the business was closed. However, this does not include licensed devices that were not visited by an inspector.

- **Purpose of the Inspection.** The “inspection purpose” field in the AgLicense inspection record should indicate why an inspection was completed. However, Division standard operating procedures do not instruct inspectors to complete the inspection purpose field, despite it being information the Division needs to track why an inspection occurred. For example, the inspection may have been a routine annual inspection or may have been conducted in response to a complaint. We reviewed the 35,570 inspection records in AgLicense from Calendar Years 2019 through 2023 and found 115 records where the inspection purpose field was blank. Although the number of incomplete records is relatively small, this information is important because, without the inspection purpose, the Division does not know why an inspection was conducted.

In addition, we found 16 records marked as a complaint in AgLicense. Of those 16, we found that 4 records (25 percent) did not contain any data inside or outside AgLicense indicating a complaint was submitted to the Division and prompted an inspection. It is unclear if these inspections were complaint inspections or if an inspector accidentally clicked “complaint” in the AgLicense field in error. The Division lacks controls and supervisory review to ensure an inspection is marked as a complaint in the inspection purpose field. Of the 31 complaints documented in the Division’s Google sheet, we found 5 inspection records (16 percent) where an inspection occurred after the complaint, but the inspection record and purpose in AgLicense had no information indicating the inspection resulted from a complaint or the source of the complaint.

The Division cannot identify on an aggregate level how many devices are in or out of compliance or what enforcement measures have been taken. The Division does not have a report that it can run to show at any given time which devices are in or out of compliance with standards, or to show the compliance rate of licensed devices, which licensed devices repeatedly failed inspections, and/or the out-of-tolerance rate of devices that failed inspections.

Why did these problems occur?

We identified the following areas where the Division's controls are lacking for inspection reporting.

The Division's information system cannot produce necessary reports. Because of the limitations of the system, the Division cannot query certain reports, such as a report listing the number of licensed businesses with small scales. As a workaround, the Division utilizes a report intended for managing inspector territories; that report does not show an accurate list of licensed businesses that need to be inspected. The system also cannot produce reports that show the accurate number of devices that are in and out of compliance at any given time. According to the Division, any changes to the AgLicense system and its reports are cost prohibitive and would take months or years to implement. The Division reports that it is in the process of securing a new information system that would contain the necessary information and functionality needed for these reports, such as the number of licensed businesses.

The Division's information system does not have controls to ensure complete and accurate data. Division staff reported that the errors we identified in AgLicense were due to a lack of system controls to validate information that is manually entered by inspectors. Specifically:

- **Blank Fields.** When an inspection form is created in AgLicense, the system allows inspectors to save the inspection form even if all fields in the form are blank. This includes key fields, such as the statutory violation type that was identified during the inspection. This leads to the Division not knowing if an inspection was actually completed or if the inspection record was created in error, without reviewing each individual file.
- **Inaccurate Fields.** AgLicense does not have checks to ensure that numbers entered by inspectors are consistent with data that was previously entered. For example, if an inspector reported that a business had 45 scales but the license shows 25 scales, AgLicense does not let the inspector know that the data conflicts before submission. Additionally, AgLicense does not have the ability to flag inspection reports that have data that is inconsistent with other reports in AgLicense. Unless the inspector self-checks their work and identifies an incorrect number, such as mistakenly entering 100,000 devices as inspected at a single business, or management happens to review the report during an occasional spot check, possible errors are never identified by the system and subsequently corrected by Division staff, making system-generated reports and exported data unreliable.

Division staff reported that they are aware of the limitations of AgLicense and that the data from it is inaccurate. However, the Division has not taken steps to implement system controls in AgLicense to help ensure that system data are accurate. The Division reports that it is in the process of securing a new information system and it is important that the new system include sufficient controls to address these types of data issues.

The Division does not have policies and procedures for consistent monitoring and supervisory review of inspection reports. Division management reported that work leads, the field staff manager, and the program manager review a random sample of inspection reports to check for the accuracy and completeness of the reports about once a month, depending on their availability. The Division's Standard Operating Procedures (Procedures) do not discuss requirements for inspectors to input data in necessary fields—such as the inspection purpose—which would also drive what the supervisors would review in inspection reports. For instance, a supervisor during their review could use the inspection purpose field to determine if a complaint investigation was actually a response to a complaint or a routine inspection. However, there are no written policies and procedures specifying which parts of the forms should be reviewed, how often the forms should be reviewed, or which inspection forms should be reviewed by supervisors or work leads.

Additionally, given the issues we identified with the data and lack of system controls, the Division could provide inspectors more training on Division reporting requirements to ensure that they are reporting information consistently, accurately, and completely and provide training for supervisors on what to review and how often.

Why do these problems matter?

Without complete, accurate, and reliable data, the Division cannot effectively manage its resources in order to meet the Measurement Standard Program's goal. The Green Book states that "management should use quality information to achieve the entity's objectives" [Green Book, Principle 13.01]. Without having easily accessible program information on an aggregate level, such as the number of licensed businesses or which businesses have repeat offenses, management is unable to use quality information to achieve the Division's goals of protecting consumers and inspecting each device annually.

If the Division has complete, accurate, and reliable data, Division management could also use this information to manage inspector workload and prioritize inspections for those businesses that tend to have more violations. The number of licensed devices at a business will impact how long an inspection will take. For example, a big box store like Walmart could have 50 devices that require inspection while a convenience store might have one device. This can impact how many inspections an inspector can complete in a given time period. The Division could use this information to build inspector territories and schedules to help ensure that all scales are inspected annually for accuracy, as required by statute [Section 35-14-127(3), C.R.S.]. In addition, Division management could use

aggregate data on businesses' inspection histories when assigning inspections. For example, in the sample we reviewed related to the Division's enforcement actions, there were 4 livestock businesses, and all 4 livestock scales failed inspections, and there were 4 marijuana businesses where 6 scales passed and 3 scales failed. Thus, livestock scales had a fail rate of 100 percent in our sample, while the marijuana scales had a failure rate of 33 percent. Similarly, we also found that, for several businesses in our sample, the businesses' devices failed multiple inspections in a row. Failure rates could be useful for Division management to take into consideration when determining inspection schedules and for determining what, if any, enforcement actions may be warranted if violations are found during an inspection.

"...because the Division does not know the number of licensed devices or locations in the state that have been inspected, the Division cannot confirm that it is meeting statutory requirements for inspecting all licensed measuring devices annually."

Finally, because the Division does not know the number of licensed devices or locations in the state that have been inspected, the Division cannot confirm that it is meeting statutory requirements for inspecting all licensed measuring devices annually. It also impacts the Division's reporting accuracy to the General Assembly. For example, the Division reported in its 2024 Performance Plan that inspectors review approximately 25,000 scales a year, but during the audit, we were not able to verify if that total was accurate due to the issues we identified with Division data.

Recommendation 1

The Department of Agriculture (Department)—in order to better manage the Measurement Standards Program (Program) and the priorities and workloads of inspectors, and ensure compliance with statutory requirements related to annually-required inspections—should improve the accuracy, completeness, and reliability of the inspection, enforcement, and complaint data for the Program. This should include:

- A. Developing and implementing controls within its information system to improve the quality and accuracy of data in its information system and training staff on inspection data requirements and controls. This may involve developing system controls that require inspectors to complete certain fields, including the total number of devices licensed, the number of devices tested, and the type of violation identified, as well as having data field checks in inspection forms and records, such as checks to ensure the number of devices tested matches the number of devices licensed.
- B. Ensuring its information system can generate accurate reports, such as the number of licensed businesses and which devices are in and out of compliance at a given time.
- C. Creating and implementing written policies and procedures for the supervisory review of inspection reports that include how and when inspection reports should be reviewed. This may include developing a system feature that can identify which inspection reports have and have not been reviewed.

Response

Department of Agriculture

A. Agree

Implementation Date: January 2025

By January 2025, the Division of Inspection and Consumer Services (Division), within the Department of Agriculture (Department) will update each Measurement Standards Operating Procedure (SOP) to align with the new processes of territory management and Measurement Standards Program (Program) specific data. The updated SOPs include territory management, price verification inspection and reporting procedures, invoicing procedures, inspection SOPs, and program data management. The territory management and inspection SOPs will detail the procedures for completing inspection reports to verify all required fields are completed or checked, licensed devices are reported, and all potential violations are correctly reported. Inspection staff will be trained on the updated SOPs. The Technical Services Section Chief will audit training by the program manager on SOPs, proper inspection techniques, and report writing. The Field Programs Section Chief will audit each inspector's adherence to the SOPs and Program requirements. Findings will be recorded and documented to ensure consistency within the Program and assistance with future training needs.

B. Agree

Implementation Date: July 2026

The Program will develop SOPs to instruct inspectors on how to properly complete inspection reports based on the outcome of the inspection and test, what required fields to select that apply to the inspection being completed, and the review and follow-up process by management for the completed inspection reports. The inspection and management staff will be trained on these processes within its current information system to improve the accuracy, completeness, and reliability of the inspection, enforcement, and complaint data for the Program. The Division is working to replace the current information system with an updated licensing, inspection, and investigations system. The current system allows the program to track the licensed businesses that use a commercial device, along with the number of scales they have in production when they apply for an annual license. Inspectors confirm the number of scales in use corresponds with the number disclosed in the license application during inspections. However, the current information system cannot track the specific individual devices. Devices are often changed or replaced throughout the year by licensees, making the tracking, such as with an individual registration number, difficult. The Division will ensure the new system will be able to generate reports with accurate information to assist with inspection scheduling and enforcement.

C. Agree

Implementation Date: December 2024

In July of 2024, the Division implemented a tracking system to document when a report was reviewed, which inspector wrote the report, and errors found in the report, if any. Each program within the Division, including the measurement standards program, was assigned a minimum number of inspection reports for a supervisor to review monthly from each inspector. The process of using the tracking report was not documented. The Division will establish and implement an SOP that addresses the program-level review of inspection reports, including how and when inspection reports should be reviewed. Program managers will be trained on the procedures and implement the policies utilizing the report tracking document created in July 2024. Strengthening the Division's report tracking system will ensure better alignment of training needs for inspectors, consistent tracking of program performance, and identification of any gaps in procedures or policies.

Finding 2—Inspections

The Division's inspectors visit businesses that use scales or devices to measure commercially. The Division's inspectors test the accuracy and functionality of devices to ensure accurate and consistent measurements. Devices that fall under the Measurement Standards Program include airport baggage scales, self-checkout registers, deli meat scales, truck scales at ports of entry, marijuana scales, propane devices, jewelry scales, shipping scales, and livestock scales. Businesses in Colorado that use these measuring devices commercially are required to obtain licenses from the Division annually [Section 6.1, 8 CCR 1202-2]. As part of the Measurement Standards Program, the Division also conducts price verification inspections, in which an inspector visits a retail business to verify the accuracy of price representations made by the business, including advertisements and price tags. In Calendar Year 2024, the Program had 14 actively-employed inspectors who completed inspections for all Division programs; these programs include measurement standards, anhydrous ammonia, eggs, meat, feed, fertilizer, commodity handler, produce safety, and farm products. In addition, Division inspectors also conduct federally contracted inspections throughout the year, such as for the Feed Program and Produce Safety Programs contracts with the federal Food and Drug Administration and the Country of Origin Labeling inspections with the U.S. Department of Agriculture.

NIST issues standards outlined in several handbooks for states to utilize in the management of their measurement standards programs and for device service providers that repair devices that are not measuring accurately. Statute requires the Division to use NIST Handbook 44, which is for device requirements, when conducting scale inspections [Section 35-14-105, C.R.S.]. Additionally, NIST Handbook 130, which addresses laws and regulations, contains the language upon which the Division's statutes are based, and the Division has adopted the section on price verification inspections as its policy. NIST Handbook 155, which addresses measurement standards program requirements, is available as guidance in the administration of the program overall.

What was the purpose of our audit work and what work was performed?

The purpose of our audit work was to determine if the Division conducts weights and measures inspections according to statutory requirements and associated national standards.

We reviewed state laws, Division policies and procedures for scale inspections, and NIST handbooks. These handbooks include inspection procedures and other information for those who are involved in the maintenance of weights and measures systems, including weights and measures inspectors. We conducted interviews with 3 Division inspectors, and we sent a survey to, and received responses from 13 inspectors. We also observed a variety of weights and measures inspections in both urban and rural areas of the state. This included four scale inspection locations, two of which were in rural Colorado communities, and two price verification inspections, one of which took place at an urban retail store and the other in a rural community grocery store. In total, we watched inspectors test more than 50 devices as well as perform price verification inspections of 75 sampled goods, and gained an understanding of how inspectors handle failed devices, take enforcement actions, communicate enforcement actions to businesses, and report failed devices and prices. Finally, we reviewed weights and measures data from AgLicense for 35,570 inspection records for Calendar Years 2019 through 2023. From this data, the audit team randomly selected 40 inspection records to determine if the inspections met requirements and evaluate data that was not available on an aggregate level. We evaluated if the Division met its statutory requirement to inspect all licensed devices in Calendar Year 2023 by analyzing the available data in AgLicense. Exhibit 2.2 shows the 11 types of scales and devices that were included in the inspection sample.

Exhibit 2.2
Sample Scales and Devices by Business Type
Calendar Years 2019 through 2023

Business Category	Number of Businesses	Passed Scales	Failed Scales	Scales Not Tested ⁴	Total Scales Inspected
Restaurant	3	3	0	1	4
Coffee Shop	2	0	1	1	2
Marijuana Scale	7	27	1	0	28
Floor Scale ¹	1	2	0	0	2
Grocery Store	2	9	0	0	9
Livestock Scale	5	4	1	0	5
Other Scale or Device ²	7	9	0	2	11
Shipping Scale ³	3	6	0	0	6
Truck Scale	1	1	0	0	1
Propane Scale	7	7	0	0	7
Pawn Shop Scale	2	2	0	0	2
Total	40	70	3	4	77

Source: Office of the State Auditor analysis of AgLicense reported data on sample of 40 businesses.

¹According to the Division, a floor scale is a platform scale on the floor of the business that weighs large items.

²Other types of scales include hopper scales for concrete plants, automatic weight systems, or bagger scales at feed mills.

³Shipping scales are found at stores like UPS and Office Depot and are used for weighing items to ship.

⁴Some devices were not tested by inspectors due to circumstances such as the scale being inaccessible or the business no longer using the scale commercially.

How were the results of the audit work measured?

Measuring devices shall be inspected annually. Statute requires the Division to “test or cause to be tested for accuracy every scale, textile meter, or cordage meter for which the owner has been issued a license to operate at least once every twelve months or more often if necessary” [Section 35-14-127(3), C.R.S.]. These inspections ensure that, from business to business across the state, scales and other measuring devices are accurate. This consistency facilitates trade and permits fair competition among businesses by allowing people in commerce and the public to confidently compare goods.

Price verification inspections should be completed regularly. Statute requires that the Division “shall administer and enforce the provisions of [the Measurement Standards Act]” [Section 35-14-106, C.R.S.], including the provision that “[n]o person shall misrepresent the price of any commodity or service sold or offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person” [Section 35-14-111, C.R.S.]. In order to ensure prices are not misrepresented to consumers, the Division conducts price verification inspections of businesses that have a point of sale system. The Division uses the “Examination Procedure for Price Verification” from NIST Handbook 130

for its price verification inspections. This Handbook defines the normal price verification inspection frequency as “semi-annually or annually” [NIST Handbook 130, Section V.2.8 Examination Procedure for Price Verification, Inspection Frequency].

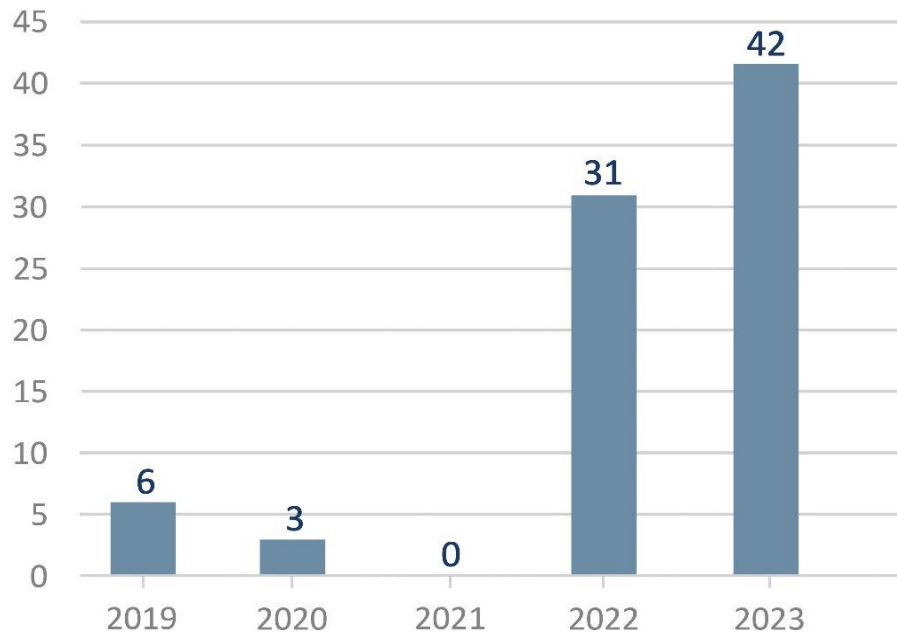
What problems did the audit work identify?

The Division did not complete inspections of measuring devices according to statutory requirements and national standards.

- **The Division did not complete the required inspections of all measuring devices in Calendar Year 2023.** According to AgLicense data, there were at least 3,434 licensed measuring devices across 636 businesses in the state that were not inspected in Calendar Year 2023. However, we were not able to determine the exact total number of licensed devices that were not inspected due to inaccurate data in AgLicense, as discussed in Finding 1.
- **Some businesses were not tested within 12 months.** For the 40 records in our sample, excluding closed accounts and records where a full year had not yet passed between the last inspection and the date of our reviewing of the record, we found 13 out of 27 inspections (48 percent) where the measuring devices were not inspected again within 12 months, as statutorily required. The number of days between inspections of the locations of these measuring devices ranged from 373 days to 737 days.
- **Some devices were not tested even though inspection was marked complete in AgLicense.** We found that no measuring devices were tested for 4 of the 40 (10 percent) inspection records we reviewed in our sample, according to the inspector notes in the attached inspection reports. For three of these inspections, the inspector visited a business but was unable to inspect the scale, for instance when the business was closed or the scale was not being used. The inspector still created an inspection report and marked the inspection report as “complete” in the “inspection outcome” field in AgLicense, despite no measuring devices being tested. For the fourth inspection, the inspector created the inspection report, but did indicate in the “inspection outcome” field that it was “not inspected.”

The Division rarely conducts price verification inspections of eligible businesses. According to AgLicense data, the Division averaged fewer than 17 price verification inspections of eligible businesses annually in Calendar Years 2019 through 2023. The Division does not know the number of businesses that would be subject to price verification inspections or the number of businesses with licensed measuring scales, as discussed in Finding 1. However, according to 2021 U.S. Census Bureau data, there were more than 37,000 retail businesses in Colorado. If the Division is averaging 17 price inspections a year out of the 37,000 businesses, the Division is only conducting price verification inspections on 0.05 percent of the possibly eligible businesses. Exhibit 2.3 shows the number of price verification inspections recorded in AgLicense.

Exhibit 2.3
Price Verification Inspections as Reported in AgLicense
Calendar Years 2019 through 2023



Source: Price verification inspection data as reported in AgLicense.

Why did these problems occur?

We identified the following factors that contributed to the Division not conducting inspections according to statutory requirements and national standards.

- **The Division does not have policies to prioritize inspections based on statutory requirements or risk.** The Division's 14 inspectors are responsible for conducting inspections under several programs, and some of these programs include federally contracted agricultural inspections. There are five program managers who direct inspectors on the completion of inspections for their corresponding programs. According to the Division, weights and measures inspections are the only inspections for which there is an annual requirement in statute. However, the Division has not established a process to prioritize inspection resources in consideration of those specific statutory requirements, which are currently not being met.
- **The Division does not have a method, along with policies or procedures, for prioritizing inspections of businesses with licensed measuring scales that were missed in the last year or that failed their last inspection.** Division policy instructs inspectors to mark inspection outcomes as completed if the inspector visits a location, regardless of whether the inspector tests a device or not. As a result, the Division is unable to determine whether the businesses identified in AgLicense as having completed inspections actually underwent device

testing by Division inspectors or not. Further, the Division does not track devices that failed consistently, and the Program Manager reported that some inspectors fail to report all failed scales in their inspection reports. The Division also does not review inspection reports for trends in failed devices or stores that have been missed for their annual inspection. As a result, the Division is unable to prioritize scales that were missed last year or failed their last inspection.

- **The Division does not have a process for identifying which businesses should receive price verification inspections and how they should be prioritized.** Division staff stated that, prior to 2019, price verification inspections were only completed in response to consumer complaints and that they restarted routine price inspections in 2022. However, AgLicense showed that inspectors only completed 42 price verification inspections in 2023. The Division does not have policies or procedures that detail which businesses should receive price verification inspections, how to conduct a price verification inspection, or how specific business locations will be identified. Without a complete process, the Division cannot prioritize eligible businesses by risk or plan the completion of all necessary price verification inspections by adding them to inspector schedules.
- **The Division has not conducted a comprehensive workload assessment to determine the resources needed to fulfill its inspection-related responsibilities or, alternatively, how to best fulfill its responsibilities given the resources that it has.** The Division utilizes a workload calculator to help determine inspector territories and workloads based on factors like the number of businesses in a territory, the number of inspections that can be completed in one day, the types of inspections, days off, and training. For 2024, the Division's territory workload calculator shows that 11 of the 14 inspectors would require more than 52 weeks to complete their assigned inspections, with the largest inspector workload requiring 60 weeks to complete. In planning the year's workload, the territory calculator also showed that, on average, the Division only allotted 44 percent of inspectors' time to inspecting weights and measures devices, despite it being the only statutorily-required inspection. The other 56 percent of the inspectors' planned time is for other program inspections (e.g., meat, eggs, grain, etc.), training, leave, and other administrative tasks. When the audit team surveyed inspectors, they reported having difficulty keeping up with their assigned Measurement Standards Program inspections when other types of inspections are also needed.

During the course of our audit work, the Division had 1 vacant inspector position, 1 inspector on extended leave, and 3 inspectors who said they had held their positions for less than 1 year, which contributed to the assignment of more work to other inspectors. However, the Division does not factor in vacancy rates in its process for determining inspector assignments in the territory workload calculator. Additionally, according to the Division's territory workload calculator, an inspector can conduct 2 price verification inspections in a 10-hour day. Based on the calculator, if price verification inspections were conducted only at the retailers that have a licensed measuring device on record with the Division (about 2,220 businesses), it would take 1,110 total days to complete those inspections, or about 79 days for each of the 14 inspectors.

This would be in addition to scale testing as well as the other program inspections for which these 14 inspectors are responsible.

Based on this preliminary workload information, it appears that the Division may not have sufficient inspector resources to comply with its inspection responsibilities and statutory requirements. However, the Division has not completed an assessment of how many inspectors it would need to do so. In addition, the Division has not considered alternatives to potentially requesting additional inspection resources. For example, the Division could consider pursuing statutory changes to amend the requirement that scale inspections occur annually, and instead allow the Division to schedule inspections using a risk-based approach.

Why do these problems matter?

The statutory requirement for the annual testing of licensed measuring devices is intended to protect consumers and businesses against the uncertainty from unmaintained and inaccurate measuring devices used in commerce. The accuracy of even a single licensed device can have extensive economic impacts. For example, devices such as truck scales or grain moisture meters may be used in multimillion-dollar transactions involving huge quantities of goods. This is also true for other devices because of the large cumulative volume that passes over them as a result of constant use.

“... we observed a grocery scale overweighing items by 0.29 pounds. If this register was serving an average of 60 customers per day purchasing an average of \$5 of weighed goods, that single scale would overcharge customers by \$31,755 in the course of a year.”

For example, grocery scales licensed by the Division are utilized by many consumers daily, which means a large number of consumers could be impacted by an inaccuracy that goes unchecked for a year or more. On one of the audit site visits, we observed a grocery scale overweighing items by 0.29 pounds. If this register was serving an average of 60 customers per day purchasing an average of \$5 of weighed goods, that single scale would overcharge customers by \$31,755 in the course of a year. Other types of scales that are subject to the Division’s inspection requirements can be small devices used in the transaction of high-dollar goods, such as gold buyer scales. These scales could have a large economic impact on the buyer and seller if the scale is not measuring accurately.

Price verification inspections also impact Colorado consumers. Price verification inspections enforce the statutory requirement that advertised prices be accurate. This has a direct impact on consumer confidence across the marketplace because consumers base their decisions directly upon represented prices. For example, someone may compare advertised prices to decide which store to visit. Once at the store, customers rely on price tags to make decisions about the individual products they purchase. Price verification inspections are vital to maintaining accountability for Colorado’s large retailers and preventing their unlawful misrepresentation of prices. Division staff explained to us that accuracy of price tags at Colorado’s 90 Walmart retail stores improved dramatically after the Division’s inspectors identified widespread price misrepresentation. This is an example of the direct consumer protection achieved by price verification inspections and the widespread misrepresentation of prices that can take place in their absence.

Recommendation 2

The Department of Agriculture (Department) should ensure that it conducts licensed measuring device and price verification inspections to meet statutory requirements and associated national standards by:

- A. Establishing a method for tracking each licensed business, whether the business' devices were tested each year, and any measuring devices that failed inspection.
- B. Establishing policies and procedures related to how inspectors should prioritize weights and measures inspections to ensure that inspectors can inspect all weights and measures devices annually, with an emphasis on prioritizing the inspection of scales that are overdue for inspection or that failed their last inspection.
- C. Establishing policies and procedures for price verification inspections that include how many price inspections should be conducted annually, how inspectors should prioritize price verification inspections based on risk in relation to other inspections, and how to conduct price verification inspections.
- D. Assessing the resources needed to meet the statutory requirements of inspecting each licensed measuring device annually and to protect consumers against price violations, which would include assessing inspector's workload and how prioritization of inspections developed under Parts A and B affects resources or assignments as needed. Based on the results of this assessment, the Division should determine the best way to fulfill its inspection responsibilities, which could include requesting additional resources or pursuing statutory changes to revise the annual inspection requirement for licensed measuring devices and allow the Division to schedule inspections using a risk-based approach.

Response

Department of Agriculture

- A. Agree

Implementation Date: January 2025

The Colorado Department of Agriculture (Department), Division of Inspection and Consumer Services (Division), Measurement Standards Program (Program), will establish and implement a Standard Operating Procedure (SOP) outlining the existing procedures to track licensees, if the licensees and associated devices have been inspected, and document the outcome that will include if a device failed inspection. All staff working with the Program will be trained on the SOP. Adherence to the SOP will be reviewed by the program manager, Technical Services Section Chief, and the Field Programs Section Chief at least quarterly, as inspector assignments

are evaluated. The evaluation will be recorded in the Division's database and will include the total number of devices inspected and the types of violations issued. This information will be analyzed and recorded in a calendar year progress tracker. As a new information system is implemented, the Department will ensure the system can meet the tracking and reporting requirements.

B. Agree

Implementation Date: April 2025

The program will create and implement an SOP to guide inspectors on how to prioritize their territories to include weights and measures inspections, farm products, commodity handler investigations, and federal contract inspections to be completed using the current information system. The defined process will prioritize weights and measures scales that are within twelve months of their last inspection, along with scales that are overdue or have failed their last inspection.

C. Agree

Implementation Date: January 2025

In early 2024, the Program was one of 13 states that participated in a national price test verification surveillance and inspection training program. The goal of this program was to ensure all participating states are consistent in inspection procedures and reporting of store types and pricing errors, evaluate how and what level of enforcement each state uses, and determine if any updates or changes are needed in the national standard outlining the inspection procedure. The Program will establish and implement an SOP for price verification inspections based on Section V of NIST Handbook HB130, Examination Procedures for Price Verification. The SOP will have procedures incorporating data and information from the national program for determining how many inspections to complete each year, categories of stores, how to prioritize inspections based on risk, and how to conduct a price verification inspection. Risk will be based on the outcome of inspection results, previous inspections, and trends of high failure rates identified within categories of stores.

D. Agree

Implementation Date: April 2025

The Division experienced a high staff turnover from 2020 through 2023. Vacancies typically require two to three months to fill, and another two months for the new inspector to be fully trained. As a result, vacant territories often have to be assigned to staff in close proximity. Managing staff vacancies and other inspection and investigation duties makes it difficult to conduct every inspection within twelve months of the last inspection for every licensee in Colorado. The Division believes clarifying that the inspection requirement must be completed within a licensee's twelve-month license cycle, from January 1 through December 31, instead of

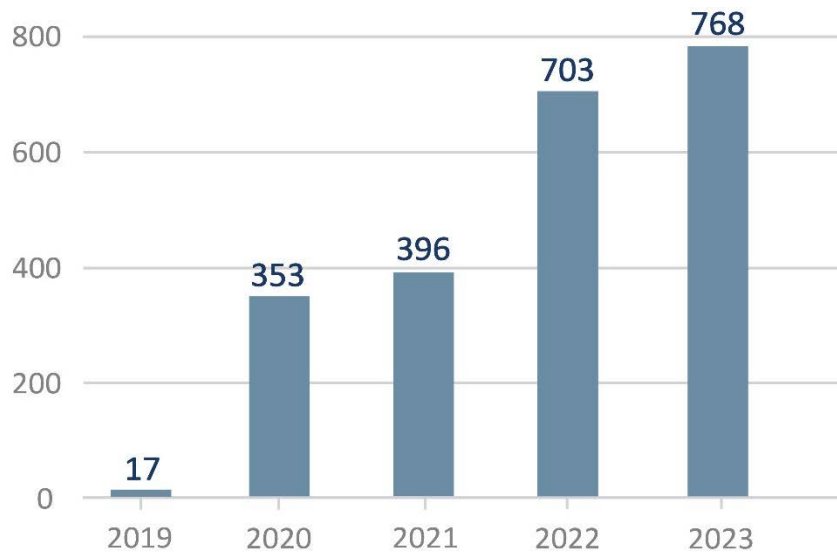
within twelve months from the previous inspection, will provide additional flexibility to staff to meet the statutory timelines with existing resources while maintaining a high level of consumer protection by ensuring each licensee is inspected at least once every year-long license cycle. The Division will pursue legislative changes to adjust the inspection period and is open to working with the General Assembly to make those changes this year. If the current statutory requirements are not changed, the Division will assess the number and variety of inspections each inspector completes within their assigned territory and the additional resources needed to meet the statutory requirements of inspecting each licensed measuring device at least once every twelve months.

Finding 3—Enforcement of the Measurement Standards Act

As part of its regulatory responsibilities related to the Measurement Standards Program, the Department is authorized to take enforcement action when licensed measuring devices are out of compliance with standards or prices or are not accurate [Sections 35-14-144 and 35-14-106, C.R.S.]. The Division’s goals align with this purpose; the primary goals of the Division are “consumer protection, promotion of equity in the marketplace, and animal and human safety.” As a part of its work to carry out these goals, the Division reports that, “Measurement Standards inspectors certify commercially used scales and devices...and check prices in stores throughout Colorado to ensure that consumers are not overcharged.” After an inspector visits a business and creates an inspection report, they send a copy of the inspection report to the business and may also provide the business with a list of device service providers (providers), who are certified by the Division to repair devices. Businesses have the option of fixing the scales themselves or they can hire a device service provider to fix it.

Exhibit 2.4 shows the total number of inspection reports in AgLicense that indicate there was at least one device that was out of compliance with statutory and NIST requirements, or where at least two prices were found to be inaccurate and, as a result, were overcharging consumers, as reported by the Division for Calendar Years 2019 through 2023.

Exhibit 2.4
Failed Scale and Price Verification Inspections
Calendar Years 2019 through 2023



Source: Failed inspection reports and price verification inspection data as reported in AgLicense.

As shown, there was an increase in the number of failed inspection reports in 2022 and 2023. According to the Division, this increase could have been due to there being a new Program Manager who started in 2022 and who provided stronger guidance to inspectors on how to report failed devices, including that inspectors should be reporting all failed devices. In addition, as discussed in the Data Management finding, this data was pulled from the AgLicense system, and auditors were unable to determine if the number of failed inspections was accurate or inclusive of all failed devices in any year of the audit period.

After the inspector completes their inspection report in AgLicense, if a device is found to be out of compliance, the inspector may notify the Program Manager about the failed device, though it is not required in most instances. The Division's Procedures state that the only time inspectors shall notify the Program Manager about a failed device is when they believe additional enforcement actions, like civil penalties, should be issued. The Program Manager, in coordination with Division management, decides if disciplinary action is warranted. The Division is statutorily allowed to issue civil penalties up to \$750 per violation as a disciplinary action if a device is found to be out of compliance [Section 35-14-131(1), C.R.S.]. Documentation on the Division's process of issuing civil penalties to businesses is kept by Division management outside of AgLicense.

What audit work was performed and what was the purpose?

We reviewed state laws, rules, and Division policies, procedures, and federal standards and guidance related to inspections and enforcement that describe what actions can or must be taken when violations of the Act are identified during inspections. We interviewed Division management and staff, including inspectors, about conducting inspections that identify failed devices or inaccurate prices and enforcement actions. We also observed a variety of weights and measures inspections in both urban and rural areas of the state. In total, we watched inspectors test more than 50 devices as well as perform price verification inspections of 75 sampled goods, and gained an understanding of how inspectors handle failed devices, take enforcement actions, communicate enforcement actions to businesses, and report failed devices and prices. Additionally, we reviewed the aggregate data in AgLicense for failed inspections for Calendar Years 2019 through 2023. We also analyzed a random sample of 40 inspections completed during Calendar Years 2019 through 2023, where at least one device failed the inspection or two products were incorrectly priced. This included 39 inspection reports that indicated that at least one device, or scale, failed during the inspection and should have had a red or blue tag fixed to the device, and 1 price verification report that showed that prices posted on the shelf did not match the prices at the register. Lastly, we sent out a survey to 45 device service providers in the state to understand providers' workloads and their communications with the Division, and analyzed the results from the 12 responses we received.

For each inspection report in our sample, we reviewed AgLicense documentation and supporting documentation provided by the Division—including notices of civil penalties issued to businesses—to assess whether the Division pursued disciplinary action that aligned with law, as well as to determine if the Division consistently reported on and enforced the same types of violations. We also reviewed any device service provider reports the Division had for the sample to determine if the Division received them and if they indicated that the devices identified as being out of compliance had been repaired. During inspections, one business can have some devices that pass and others that fail. Exhibit 2.5 provides details on the types of businesses we reviewed as well as the number of scales, by type, that passed and failed inspections included in our sample during Calendar Years 2019 through 2023.

Exhibit 2.5
Inspection Results for Sample by Business Type
Calendar Years 2019 through 2023

Business Category	Number of Businesses	Passed Scales	Failed Scales	Scales Not Tested ⁴	Total Scales
Restaurant	2	0	2	1	3
Coffee Shop	1	0	1	0	1
Marijuana Scale	4	6	3	1	10
Floor Scale ¹	3	4	8	0	12
Grocery Store	7	159	8	3	170
Livestock Scale	4	0	4	0	4
Other Scale or Device ²	3	5	3	0	8
Shipping Scale ³	2	1	2	0	3
Truck Scale	13	14	14	0	28
Total	39	189	45	5	239

Source: Office of the State Auditor analysis of AgLicense reported data on sample of 40 businesses with failed inspections.

¹According to the Division, a floor scale is a platform scale on the floor of the business that weighs large items.

²Other types of scales include hopper scales for concrete plants, automatic weight systems, or bagger scales at feed mills.

³Shipping scales are found at stores like UPS and Office Depot and are used for weighing items to ship.

⁴Some devices were not tested by inspectors due to circumstances such as the scale being inaccessible or the business no longer using the scale commercially.

The purpose of our audit work was to determine if the Division's enforcement processes meet statutory requirements and are effective at providing consumer protection and promoting equity and integrity in the marketplace, as described in the Division's goals. To make this determination, we looked at (1) whether inspection reports and device service provider reports included evidence to show that the Division is enforcing the Act; (2) whether the Division ensured that device service providers repaired scales within required timelines; (3) whether inspection reports included standard, inspection report language required by the Division; and (4) under what circumstances the Division issued civil penalties to businesses that failed inspections to enforce compliance with the Act.

How were the results of the audit work measured?

Statute, national standards, and Program internal policies provide the Program with enforcement mechanisms useful for bringing businesses that fail inspections into compliance with the standards.

- **Statute requires failed devices to be repaired or be removed from commercial use.** Statute requires that businesses repair licensed measuring devices that require minor repairs within 30 days of the inspection date or within a reasonable amount of time as determined by the Commissioner of Agriculture [Section 35-14-124(1), C.R.S.]. When a device requires minor repairs, an inspector places a blue tag on the device and the business is permitted to continue

using the device commercially [Section 35-14-124(1), C.R.S.]. The tolerance level for blue-tagged devices changes depending on the device type being tested. For example, a large scale that weighs items up to 20,000 pounds will have a wider ranging tolerance level than a smaller scale that weighs items up to 30 pounds. Division Procedures direct that when a device exceeds the tolerance level allowed for a blue tag on that device type, the device is issued a red tag [Small Scale Standard Operating Procedure, Section 10.1, Blue Tag-Red Tag Diagram]. Statute requires that any red-tagged devices be removed from commercial use until the device has been repaired [Section 35-14-124(2), C.R.S.]. Neither businesses nor providers that repair devices are allowed to remove either blue or red tags placed on scales by Division inspectors; a Division inspector must remove the tag [Section 35-14-123(11), C.R.S.]. However, as discussed later in this finding, the Division does not have a process for removing tags it places on devices.

- **The Division has authority to issue civil penalties to businesses.** When a business fails a licensed measuring device or price verification inspection, statute permits the Division to issue civil penalties to the associated business up to \$750 per violation—the penalty may be doubled if a person or business has violated the Act a second time [Section 35-14-131(1), C.R.S.]. The Division’s internal policy states that the first offense of the Act may result in a \$100 civil penalty, a second offense may result in a \$200 civil penalty, and a third offense may result in a \$300 civil penalty. However, it further states that “when in doubt, do not issue a civil penalty.”
- **NIST recommends Programs clearly report the findings of inspections.** The standards state that “[t]he official will be well advised to keep careful records of equipment that is rejected, so that he may follow up to ensure that the necessary repairs have been made.... Such records may be invaluable should it subsequently become necessary to take disciplinary steps because of improper use of such equipment” [NIST Handbook 44, Section 8.1, *Records of Equipment*].
- **Device service providers are required to submit reports to the Division.** Statute requires that device service providers submit a report to the Division explaining what devices they have fixed within 10 days after fixing a device [Section 35-14-123(7), C.R.S.]. Additionally, NIST recommends that “it is critical that the devices tested by the service companies are accurate and comply with weights and measures laws and technical regulations. This determination is made by reviewing the paperwork submitted by the service companies... and conducting follow-up testing of devices that were checked by the service companies to verify that the devices are performing consistent with the information reported by the service company” [NIST Handbook 155, Section 23.4, *Integrating Government and Private Sector Inspections*].

What problems did the audit work identify?

Overall, we found that the price verification inspection we reviewed was conducted according to requirements and the Division’s enforcement actions taken in response to this inspection were consistent with Division policy. This price verification inspection reviewed 100 items and found that

7 items were overcharged. As required, the Division inspectors returned to the store 32 days later to conduct a follow-up inspection, and found that 2 out of 100 items inspected were overcharged, which was sufficient for passing the inspection.

However, we found the Division does not have effective enforcement processes to ensure that scales that fail inspection are brought into compliance. Specifically:

- **The Division does not know when all scales are repaired or replaced.** The Division did not have service provider reports or reports from businesses that fixed devices themselves verifying that 23 of the 39 (59 percent) businesses in our sample had repaired or removed the scales from commercial use following a failed inspection. For these 23 businesses, the Division had no data to support whether these businesses were complying with statute by repairing or removing devices that were marked as noncompliant by inspectors, or if those businesses continued to use their scales commercially, forgoing repairs, in violation of statute. For example, we found that one device service provider report was not filed until 363 days after an inspection first red-tagged the scale; and because of a lack of data, neither we nor the Division could confirm if that scale had been in use for almost a year, despite it being required to be removed from consumer use. In another instance, a business failed an inspection in November 2022, but the Division did not receive a service provider report, and the Division has not inspected the business again, meaning this device may have been out of compliance 481 days later.

Additionally, outside of the device service provider reports, the Division does not have a means of ensuring that businesses are not using tagged scales. When a scale fails an inspection, the Division cannot verify if the scale is back into compliance until a Division inspector visits the scale again, which is generally at the next annual inspection. Seven of the 39 (18 percent) failed scale inspection reports in our sample also had subsequent inspections reports that showed the same scales failed their next inspection. Of those seven, three inspection reports had a device service provider report that stated the device was repaired after the first failed inspection, indicating that the provider repairs were either not done correctly or were done in a way that did not ensure long-term functionality of the scales. For the repeat failed scales reviewed in the sample, the scales were potentially out of compliance anywhere from 487 calendar days to over 800 calendar days, which is beyond the 30 days we set for the audit test work, or what would seem to be a “reasonable time,” as required in statute [Section 35-14-124(1), C.R.S.]. Exhibit 2.6 details the seven types of scales that failed multiple inspections in a row at the same businesses.

Exhibit 2.6
Sample Scales That Failed Multiple Inspections in a Row
Calendar Years 2019 through 2023

Sample	Scale Type	First Failed Inspection Date	Second Failed Inspection Date	Date and Outcome of Most Recent Inspection	Time Elapsed between First Failed Inspection and the Most Recent Inspection
1	Shipping	December 2021	June 2022	April 2023, Pass	487 days
2	Grocery	October 2022	October 2023	No Inspection	515 days
3	Truck	August 2022	August 2023	No Inspection	580 days
4	Home Goods	March 2022	April 2023	January 2024, Pass	653 days
5	Manufacturing	March 2022	February 2023	January 2024, Pass	681 days
6	Truck	January 2022	November 2023	No Inspection	804 days
7	Marijuana	October 2020	June 2022	December 2022, License Closed	805 days

Source: Office of the State Auditor analysis of AgLicense failed inspection report sample data.

- **The Division did not issue civil penalties to businesses that failed inspections.** The Division did not issue civil penalties to any of the 40 businesses in our sample that failed inspections. This includes the 7 businesses that had the same scale fail two inspections in a row. The Division reported that it has issued 3 civil penalties totaling \$450 since 2019.
- **Inspection reports did not always include sufficient information on violations to determine appropriate enforcement actions.** For 28 of the 40 inspection reports (70 percent) in our sample, we found that the reports did not include complete or consistent information on why a business failed an inspection, and whether the nature or degree of the failure warranted an enforcement action. For example, we identified 14 reports that did not include information on whether the scale was measuring below or above the weight tested by the inspector to indicate how large the error rate was and how far out of compliance the scale was. Reporting the tolerance level of scales, and other relevant information, matters for enforcement actions because if inspection reports are incomplete or inaccurate, the Division may not have the data it needs to justify its original enforcement actions or taking additional enforcement actions, such as issuing civil penalties.

Why did these problems occur?

These problems occurred because the Division lacks written policies that outline expectations and ensure uniformity and accuracy across inspection reports and enforcement actions.

The Division lacks procedures for tracking and verifying work that is completed on scales.

The Division does not track if businesses or device service providers send service reports for all failed scales after they are repaired and it does not have a process for attaching service reports to a failed inspection report. This means that the repair record cannot easily be tracked back to the failed inspection report. NIST guidance emphasizes that it is critical that Division management review the paperwork submitted by device service providers and conduct follow-up testing of devices to verify provider results [NIST Handbook 155, Section 23.4, *Integrating Government and Private Sector Companies*]. In addition, Division management reported that because of its limited resources and the amount of work assigned to inspectors, they typically do not have time to conduct additional inspections solely for the purpose of verifying that out-of-compliance scales have been fixed. Currently, the Division tells inspectors to verify if a scale is in or out of compliance when the inspector conducts their next annual inspection at the business, which may be more than a year after the first failed inspection.

Additionally, statute allows businesses to fix scales themselves [Section 35-14-123(7), C.R.S.], but they are not required to report to the Division when they repair a scale. The Division has internal instructions that recommend that inspectors tell businesses to email the Program Manager to let them know that the business is going to repair the scale; and from there, the Program Manager can grant the removal of a blue or red inspection tag from the scale [Section 35-14-131(5)(d) C.R.S.]. However, the Division reported that there is no formal process to verify if businesses remove blue or red tags between inspections.

The Division's internal policy is unclear and does not provide guidance for management on issuing civil penalties. Through the rulemaking process, the Department repealed rules related to the assessment of penalties in 2014 because “existing rule [was] too stringent and [did] not allow for consideration of aggravating/mitigating circumstances when a civil penalty is issued” [8 CCR 1202-2.9.4.2]. After the rule was repealed, the Division created an internal policy to guide when civil penalties should be issued. The policy states that the first offense of the Act should result in a \$100 civil penalty, the second offense should result in a \$200 civil penalty, and the third offense should result in a \$300 civil penalty, but also that, “when in doubt, do not issue a civil penalty.” There is no additional guidance for Program management on what factors to consider when issuing enforcement action, such as frequency of failed inspections, severity of the failure, type of business or device, or penalty amount that would drive consistent application of the policy. The Program has only issued three civil penalties, \$150 each, in the last 5 years to 3 businesses that each failed 3 price verification inspections in a row—2 of the 3 civil penalties were issued to 2 different locations of the same big box store chain. One inspection found that 11 out 100 items tested were overcharged. The Division could not provide documentation to verify why civil penalties were only issued after 3 failed inspections, and not after the first offense.

The Division lacks comprehensive policies and procedures to ensure that reports contain the necessary components to justify enforcement actions. The Division's Procedures for inspectors include limited information on reporting outside of information on issuing blue or red

tags when a licensed measuring device fails an inspection. Since 2020, the Division created four additional documents for inspectors, detailing what should be included in inspection reporting, but, according to the Division, three documents are for reference only and are not required to be used by inspectors. The Division stated it only has one document that includes information on what language inspectors are required to put in the inspection report narrative, including the type of violation that occurred during the inspection and why the violation occurred. These reference documents include some information for inspectors, but do not give inspectors a list of all the report components necessary to justify an inspection outcome or enforcement action. For example, the guidance documents do not tell inspectors to select from the options in the drop down menu if a warning was issued or to include the statutory citation of the violation that occurred in the inspection report. These components of the inspection report are necessary to help justify why the Division should take enforcement actions against a business for failing an inspection. However, we found that inspectors often do not include information that is required, or should be included for justification of enforcement action, in inspection reports and that the Division does not enforce reporting requirements set in its documentation.

The Division also lacks policies for review to ensure inspectors are consistently including these components in reports. The Division reported that two members of management review random samples of inspection reports once or twice a month, but their reviews only look for the required violation language that the Division requires to be in inspection reports when a device fails an inspection; they do not look for consistency, completeness, or justification of inspection outcomes across inspection reports in their spot check reviews. By not having an established review process for inspection reports, it makes it more difficult for the Division to ensure that inspection reports include all of the components needed to meet the threshold the Division has established as necessary to justify enforcement actions.

The Division does not conduct outreach to businesses and device service providers on program requirements. NIST states that having some form of compliance outreach or educational program for businesses on program requirements is beneficial. Specifically, NIST states that “programs have formal outreach programs to explain these subjects to the upper management of corporations or store chains to achieve compliance through the efforts of the businesses themselves” [NIST Handbook 155, Section 10.7, *The Role of Weights and Measures Officials*] and that “it is believed that a much higher compliance rate can be achieved through voluntary compliance than through enforcement actions to force the businesses to comply” [NIST Handbook 155, Section 12.0, *Program Scope*]. Due to the lack of outreach, some businesses and device service providers may not be aware of the requirements when repairing scales. We sent a survey to 45 providers that are licensed to operate in the state to understand if providers understand their statutory responsibilities, such as contacting the Division after they repair scales. Of the 12 responses we received, 4 device service providers stated that they did not contact the Division as part of their process in repairing a scale. One of the respondents stated that they, “fix [the scale] and get it back to the customer—why do we need to contact the department? It isn't their equipment.”

Why do these problems matter?

When the Division does not have effective enforcement processes, it cannot ensure that businesses' devices are measuring weights correctly or that businesses are charging consumers accurate prices. As a result, the Division may not be fulfilling its goal of protecting consumers and ensuring that there is equity and integrity in the marketplace for consumers and businesses alike. An effective enforcement process should include different mechanisms that can be used to help ensure compliance with Program requirements. For example, Division policy and statute give the Division authority to issue civil penalties for every inspection that identifies a violation of the Act [Section 35-14-131, C.R.S.]. Each violation can result in up to \$750 in penalties, and each day the violation occurs shall constitute a separate violation, except that the penalty may be doubled if a person or business has violated the Act a second time [Section 35-14-131(1), C.R.S.]. If the Division had opted to issue \$750 civil penalties for one day for all 40 inspections we reviewed from Calendar Years 2019 through 2023, the Division could have collected up to \$30,000 in civil penalties from those inspections, and all money collected in penalties would have been transferred to the Inspection and Consumer Services Cash Fund (Fund) for Program use [Section 35-1-106.5(1), C.R.S.]. If the Division issued a penalty for every day each device was out of compliance, the Division could have collected an even higher amount of penalties to put into the Fund for Program use and administration. We recognize that the type of enforcement mechanisms used may differ depending on the specific circumstances of a violation, such as the severity of a violation, or a repeat offender. Therefore, it is important that the Division develop a comprehensive enforcement policy that can be used consistently by inspectors for all licensed businesses to ensure compliance with program requirements.

Recommendation 3

The Department of Agriculture (Department) should strengthen its enforcement processes to help ensure that licensed measuring devices and prices comply with requirements by establishing policies and procedures that provide guidance on:

- A. What information related to violations should be included in inspection reports to support any enforcement actions taken and establish a process for management review of inspection reports.
- B. How and when civil penalties should be issued and the amount of penalties that should be assessed, and guidelines on how the severity of violations informs the process.
- C. Obtaining, tracking, and verifying service reports submitted by device service providers or businesses when scales are serviced, implementing requirements for businesses to report when they repair a scale themselves, and conducting outreach efforts for service providers and businesses on these reporting requirements.

Response

Department of Agriculture

A. Agree

Implementation Date: January 2025

The Colorado Department of Agriculture (Department), Division of Inspection and Consumer Services (Division), Measurement Standards Program (Program), currently has Standard Operating Procedures (SOPs) on how to conduct weights and measures inspections, price verification inspections, and package test inspections. The Program will amend the current SOPs to clarify how to properly report violations and determine which follow-up actions will occur based on the violation issued. The Division will train each inspector on the updated SOPs and a supervisor or program manager will audit the inspector's adherence to the SOP.

B. Agree

Implementation Date: July 2025

The Program will develop a new SOP for the issuance of civil penalties, including how the severity of the violation informs the civil penalty, reporting requirements, and follow-up requirements. Civil penalties for violations found during weights and measures inspections, price verification inspections, and package test inspections will be issued by the Program manager. Inspector training on this SOP will be conducted with all inspection staff, ensuring the Program can issue civil penalties based on the inspection report and corresponding documentation provided by the inspector.

C. Agree

Implementation Date: July 2025

The Program will document, through an SOP, a system for obtaining, tracking, and verifying device service provider service reports. The Program will develop reporting requirements for service providers and businesses. The Program will also develop a system for tracking and verifying when a person or business services a device themselves. The Program will hold outreach sessions with device service providers and businesses to communicate information required for the reports and services performed on the devices. The Program will develop informational material for both device service providers and businesses. This information will be made available electronically on the division webpage and in a hard copy format for inspectors to distribute after the licensee's inspection. This informational material will include Program requirements, weights and measures device requirements, links to Program applications, and frequently asked questions.

Finding 4—Complaints

The Program receives complaints about scales and prices via email, phone, or an online form from the Division’s website. Complaints can include a variety of issues, such as an item ringing up as a different price at the register than the price listed on the shelf or a scale measuring a good incorrectly. When the Division receives a complaint, Program staff evaluate if the complaint is “valid” by considering factors such as whether the Division has oversight over that store or device and if the complaint provides enough information for Division staff to conduct an inspection. Division staff may conduct a complaint inspection at the business or reach out to the business via phone or email, without a formal inspection.

Prior to 2022, the Division did not track complaints coming into the Division. There were a total of 10 inspection reports marked as “complaint inspections” in AgLicense for Calendar Years 2019 through 2021. However, 6 of the 10 reports did not have documentation to show that the inspection was conducted in response to a complaint. It is unknown if these inspections were in response to a complaint or if an inspector marked “complaint” in the AgLicense field in error, because the Division has no sources of documentation for complaints prior to 2022. In 2022, a new Program Manager began tracking in a Google spreadsheet when a complaint came into the Division. The Google spreadsheet includes complaints that came in via phone, email, or the Google form for complaints that is contained on the Division’s website. The spreadsheet includes information such as how the Division received the complaint, when it was received, the nature of the complaint, and whether or not Division staff determined that it was valid. In addition, if staff conduct an inspection in response to a complaint, they have the option to categorize the inspection as a complaint in AgLicense.

What audit work was performed and what was the purpose?

We reviewed state statutes, Division policies and procedures, and NIST Handbooks to determine the requirements and best practices for the Division’s complaints process. We also reviewed complaint inspection data from AgLicense and in the Division’s Google spreadsheet for Calendar Years 2022 and 2023 to determine the number of complaints received and investigated, and to evaluate those complaint records for completeness and accuracy. According to AgLicense data and the Google spreadsheet, the Division received a total of 35 complaints during this 2-year period. In addition, we interviewed Program staff and surveyed program inspectors to better understand how complaints are managed and inspected.

The purpose of our audit work was to evaluate the Division’s processes for managing complaints related to weights and measures devices and the accuracy of prices.

How were the results of the audit work measured?

According to the Division’s website, its primary goals include “consumer protection [and] promotion of equity in the marketplace.” Complaints made to the Division about inaccurate prices and scales indicate that there is a risk that consumers are being charged incorrectly, resulting in potential inequity in the marketplace. NIST handbooks provide regulations and best practice guidance for measurement standards programs. Specifically, NIST Handbook 155 was created for the specific purpose of outlining best practices of program administration, include handling of complaints. Although the Division stated that it does not follow the NIST Handbook 155, the guidance provided in the Handbook related to establishing an effective complaint process is considered best practice for the industry.

According to NIST Handbook 155, “Complaints must be taken seriously by measurement standards programs and they should receive a high priority for investigation. Weights and measures officials should encourage the public to report complaints, and should investigate them carefully” [NIST 155, Section, 19.0, *Complaint Investigations*]. Additionally, Handbook 155 program guidance states that “Although some complaints are unwarranted, weights and measures officials should investigate each one, because some complaints that initially appear questionable may result in the discovery of serious violations” [NIST 155, Section 19.0, *Complaint Investigations*]. Although there is no standard for how soon a complaint should be investigated, we applied a 30-day standard since the Handbook says they should receive a high priority for investigation.

The Division has no written policies and procedures on complaint handling. However, according to the Division, its current complaint handling process typically includes following up on complaints related to scales within the following year and on price complaints with a price verification inspection as soon as possible. If a business fails that price verification inspection, the Division aims to conduct another inspection within 30 days. The Division would then continue to conduct price verification inspections until a business passes an inspection. If the problem is persistent, the Division can choose to issue an enforcement action, such as a fine.

What problems did the audit work identify?

Overall, we found that the Division does not have effective complaint management processes. Specifically, we found:

The Division did not investigate all complaints. We identified 35 complaints related to scales or price inaccuracies submitted to the Division in Calendar Years 2022 and 2023 that had sufficient information for the Division to investigate the complaint, such as a store address and business name. For 7 of those 35 complaints (20 percent), there was no documentation to show that the Division conducted a routine or complaint investigation at the associated businesses after the complaints were filed. Specifically, we reviewed AgLicense, the Google spreadsheet, and the

Program Manager’s notes of complaints and found no evidence that the Program Manager had contacted the businesses or that an inspector had conducted an investigation. Exhibit 2.7 shows these 7 complaints by type of business, type of complaint, and the number of days that had passed since the Division received the complaint without a corresponding inspection, as of June 2024.

Exhibit 2.7
Businesses with No Inspection after Complaint
Calendar Years 2022 and 2023

Business	Date Complaint Filed	Type of Complaint	Days Elapsed Without an Inspection ¹
Grocery	November 2022	Price	577 days
Landscaping	November 2022	Scale	575 days
Grocery	May 2023	Price	379 days
Liquor Store	June 2023	Price	346 days
Grocery	September 2023	Price	248 days
Convenience	April 2023	Price	406 days
Big Box	September 2023	Price	262 days

Source: Office of the State Auditor analysis of AgLicense and Google sheet data.

¹Calculation of Days Elapsed as of June 2024.

The Division did not investigate some complaints timely. There were 21 complaint inspections conducted in response to a documented complaint. We found that for 16 of the 21 complaints (76 percent) where the Division conducted inspections, the inspections did not occur until between 31 days and 425 days after the complaint was received. Exhibit 2.8 details the 16 complaints by business type, complaint type, and number of days between the Division receiving the complaint and the Division investigating it.

Exhibit 2.8
Complaints Not Followed Up On Timely
Calendar Years 2022 and 2023

Business or Device Type	Type of Complaint	Days From Filing of Complaint to Inspection
Retail	Price	31 days
Big Box	Price	41 days
Retail	Price	59 days
Agricultural	Scale	60 days
Grocery	Price	71 days
Landscape Scale	Scale	77 days
Retail	Price	83 days
Big Box	Price	84 days
Retail	Price	98 days
Grocery	Price	118 days
Grocery	Price	184 days
Grocery	Price	204 days
Big Box	Price	328 days
Retail	Price	353 days
Industrial	Scale	353 days
Grocery	Price	425 days

Source: Office of the State Auditor analysis of the Weights and Measures Program complaints Google sheet and AgLicense complaint data.

Why did these problems occur?

The Division has not established written policies and procedures related to its complaint management process. Specifically:

The Division does not have policies or procedures related to how complaints should be processed, when they should be investigated, or how they should be documented. Prior to 2022, the Division did not track complaints or document whether an investigation was conducted in response to a complaint. Although the Program Manager started to track complaints in 2022 outside of AgLicense, there is no Division policy that states how or when a complaint should be documented, or what steps should be taken to investigate and resolve them. This resulted in some complaint inspections being documented in AgLicense without documentation of the original complaint. It also resulted in some complaints not being investigated even though there was sufficient information in the complaint tracking sheet to identify the nature and location of the complaint.

The Division also has not established timelines for processing complaints and conducting investigations in response to the complaints. In our review, we noted that the Division responded to two complaints in as quickly as 7 days, while another took 425 days for an inspection to be completed. On average, the Division's response time to complaints was 125 days. These inconsistencies mean businesses and consumers have different experiences when a complaint is made, without an understanding or rationale on why the Division is taking longer to address their complaint or resolving it within days.

Why do these problems matter?

When the Division does not follow up on complaints at all, or in a timely manner, businesses may be operating scales or charging prices that are inaccurate, which directly affects consumers. In one of the complaints the Division received, it determined there was no need to do an inspection because there was only one transaction documented in the complaint detailing the inaccuracy of the scale. However, when an inspector conducted a routine inspection at the business about 2 weeks after the complaint was received, the inspector found two scales that were out of compliance and had to be tagged, including one that had to be taken out of service immediately due to the scale being so far out of compliance; there was no mention of the complaint in the inspection report.

In addition, NIST Handbook 155 states that in order to build support for measurement standards programs, effort must be put into public outreach because “a knowledgeable public also means that consumers with complaints will know who to contact to report a perceived problem in the marketplace...[because] many successful weights and measures investigations have been triggered by consumer complaints” [NIST 155, Section 14.4, *Communication Programs*]. Recent cases in Colorado and California have uncovered incorrect pricing at large chain retailers, which resulted in a multi-million-dollar lawsuit in Colorado and thousands of dollars in penalties for California companies. The identification of these issues were triggered by customers filing complaints against the retailers that were then responded to by Division staff and inspectors.

“Recent cases in Colorado and California have uncovered incorrect pricing at large chain retailers, which resulted in a multi-million-dollar lawsuit in Colorado and thousands of dollars in penalties for California companies... these issues were triggered by customers filing complaints...”

Recommendation 4

The Department of Agriculture (Department) should strengthen the Measurement Standards Program's complaint handling process to help protect consumers by implementing policies and procedures on how to document incoming complaints and complaint inspections, when and how to respond to complaints, and when to initiate an investigation.

Response

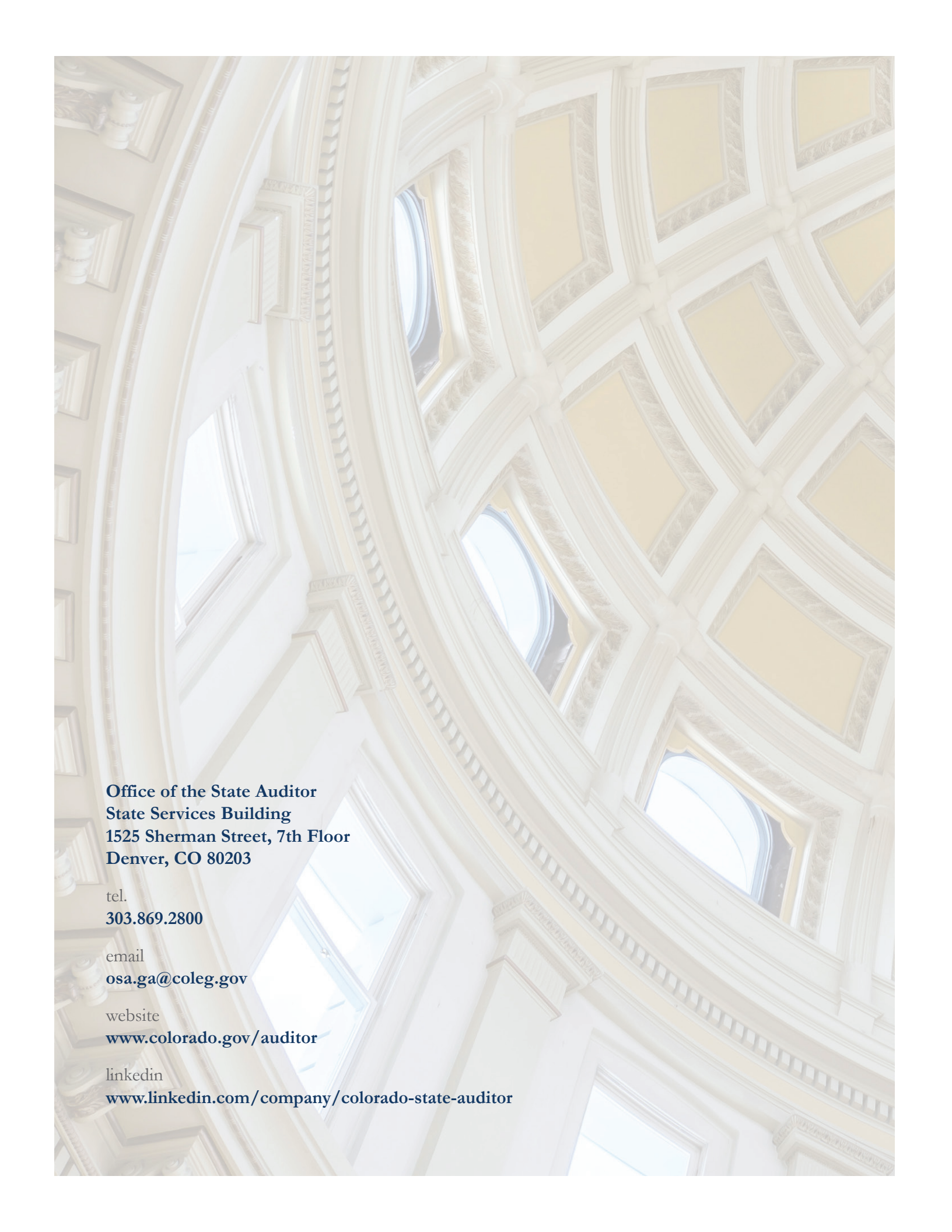
Department of Agriculture

Agree

Implementation Date: January 2025

The Colorado Department of Agriculture (Department), Division of Inspection and Consumer Services (Division), Measurement Standards Program (Program) will develop a Standard Operating Procedure (SOP) to address the complaint process, ensuring the Department consistently handles complaints and thus better protecting consumers from inaccurate devices, misrepresented prices, and other related measurement standards violations. The SOP will outline the process for handling all weights and measures complaints received by the Division. The SOP will include how to document incoming complaints, how to determine if an investigation is initiated to follow up on the complaints received, and how to determine an outcome. Division staff will be trained on the SOP to ensure proper handling and follow-up of complaints received by the Program.





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