



PERFORMANCE AUDIT REPORT

Department of Agriculture: Evaluating the Animal Facilities Inspection Program

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas**

December 2018

Legislative Division of Post Audit

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TO: Members of the Kansas Legislature

The Legislative Post Audit Committee authorized this audit of the Department of Agriculture's Animal Facilities Inspection Program at its July 31, 2017 meeting. The audit addresses questions related to the policies, staffing, and management of the program, as well as current conditions in the animal breeding facilities the program regulates.

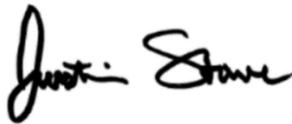
This audit was jointly requested by Senator Marci Francisco, Senator Mary Jo Taylor, and Senator Dan Kerschen.

The audit team was Kristen Rottinghaus, manager; Matt Etzel, supervisor; and Kaci Dillingham, Joel Gillaspie, and Meghan Flanders, auditors.

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. Overall, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on those audit objectives.

Also, audit standards require that we report on any work we did related to internal controls. Much of the work in this audit involved looking at control procedures such as those governing the efficiency, frequency, and adequacy of the program's inspections, penalties, and management activities. We found that the program's internal controls in several of these areas were inadequate. Details on exactly what we did in these areas appear later in the report.

If you are interested in learning more, our office has more details than we could fit into this report. If you would like more information, an individual briefing or a committee presentation, please call Matt Etzel or me at 785.296.3792.

A handwritten signature in black ink that reads "Justin Stowe". The signature is written in a cursive, flowing style.

Justin Stowe
Legislative Post Auditor

Department of Agriculture: Evaluating the Animal Facilities Inspection Program

Question 1: Are the policies and practices of the Department of Agriculture's Animal Facilities Inspection Program adequate to ensure consistent inspections and appropriate penalties?

Answer: The Animal Facilities Inspection Program did not have adequate policies to ensure consistent inspections, but the seven inspections we observed were consistent. The program did not have adequate policies or practices to ensure appropriate penalties.

Inspection Consistency

The Department of Agriculture's Animal Facilities Inspection Program (the program) is responsible for licensing and inspecting the state's 940 animal facilities, which include breeding facilities, pounds and shelters, rescue networks, kennels, pet shops, and research facilities. Licensed facilities must comply with the state's Pet Animal Act (state law and regulations) which establishes requirements related to animal health and wellbeing. The program regularly inspects facilities to ensure they comply with these requirements.

As of 2018, the program employed five full time staff consisting of three inspectors, one administrative assistant, and one director. The program's current director was appointed in August 2015. Program expenditures totaled about \$425,000 in fiscal year 2017. Additional information on licensed facilities and inspector responsibilities can be found in **Appendix B**.

Although program policy was not adequate to ensure consistent inspections, we did not identify any significant problems for the seven inspections we observed.

- State law includes several requirements to ensure healthy and humane conditions for animal facilities in Kansas. These include requirements on adequate

Sources and Methods

- We compared the program's policies to key state laws related to animal facilities and animal health and National State Auditor Association best practices for regulatory programs. We focused on best practices related to consistent inspections and documentation. We did not review practices related to inspector independence.
- We observed a non-projectable, judgmental sample of seven inspections to determine if staff were consistent in how they inspected facilities. At the time of our review, the program had two inspectors but was in the process of hiring a third. The seven inspections we observed were conducted by both inspectors and included three breeding facilities, two shelters, and two boarding kennels.

temperature, space, exercise, feeding, and watering. It is inspectors' responsibility to ensure facilities comply with these requirements. Additionally, we identified a few national best practices for regulatory programs which were mostly related to documenting and scoring inspection results.

- The program's policy lacked adequate guidance to ensure inspections were consistent. As **Figure 1-1** on the next page shows, we identified 16 main categories of facility requirements or best practices. As the figure shows, program policy adequately addressed five of these areas. For example, program policy addressed requirements related to appropriate animal housing and veterinary care. However, the program either had no policy or inadequate policy to address the remaining 11 areas. For example, the program had no policy related to a requirement prohibiting facility temperatures from falling below 45°F or exceeding 85°F for more than four consecutive hours. Additionally, the program had policy to ensure animals had access to food but lacked specific guidance on what inspectors should look for to determine if animals were underweight or malnourished.
- To measure whether inspectors were consistent in practice, we accompanied inspectors on seven inspections. We observed inspectors' practices related to 10 facility requirements or best practices shown in **Figure 1-1**, including how they assessed adequate watering, veterinary records, temperature, space, feeding, and exercise plans. The inspections we observed were generally consistent across both inspectors and the seven facilities. However, as **Figure 1-1** shows, we observed inconsistencies in how facilities were inspected in three areas. For example, one inspector did not evaluate animal exercise plans at two of the three facilities she inspected. The other inspector evaluated exercise plans on each of her four inspections.
- As **Figure 1-1** also shows, inspectors were still consistent in five areas where policies were either missing or inadequate. For example, the program lacked guidance on how to determine if animal enclosures were adequately sized. Despite this, inspectors were aware of the state's size requirements and explained a similar and adequate process to evaluate compliance with that regulation.

Officials relied heavily on staff instead of formal policies to ensure inspections were consistent.

- Officials told us the policy manual was a good learning tool for new inspectors, but they primarily expected inspectors to learn through supervised on-the-job training, reviewing state regulations, and by talking with other program staff. Officials told us updating policy would help improve staff training. Officials also agreed creating an inspection checklist, per best practice, may help ensure all applicable requirements are reviewed during an inspection.

Inspection Penalties

State law gives program officials the authority to penalize facilities that fail inspections or otherwise violate legal and regulatory requirements. The program scored violations on a scale of zero to five based on severity and the number of animals affected. An overall score of five or higher resulted in a failed inspection.

**Figure 1-1
Summary of Program Policies and Practices to
Ensure Appropriate Inspections**

| Description | Policy | Practice (a) |
|--|--------|--------------|
| State Law & Regulations | | |
| General Housing <i>(structurally sound, housekeeping, food storage, drainage, etc.)</i> | ✓ | X |
| Watering <i>(clean and potable water)</i> | ✓ | ✓ |
| Animal Tethering <i>(no more than 2 hour intervals or 4 hours total per day)</i> | ✓ | N/A |
| Veterinary Care and Euthanasia <i>(documented veterinary program, euthanasia by current methods)</i> | ✓ | ✓ |
| Indoor and Sheltered Housing <i>(Housing between 45° to 85°F, proper ventilation and lighting)</i> | X | ✓ |
| Outdoor Housing <i>(sufficient space and appropriate shelter)</i> | X | N/A |
| Primary Enclosures <i>(suitable materials used, clean litter, weather protected)</i> | X | ✓ |
| Cleaning, Sanitization, Pest Control <i>(spot-cleaned daily, sanitized food and water containers, plan for pest control)</i> | X | N/A |
| Grouping and Separating Animals <i>(incompatible animals kept separate, opposite genders kept separate)</i> | X | N/A |
| Adequate Feeding <i>(quality and nutritious food at least once per day)</i> | X | ✓ |
| Exercise <i>(exercise plan for dogs 12 weeks and older)</i> | X | X |
| Contingency Planning <i>(plan in place for emergencies or natural disasters)</i> | X | ✓ |
| Best Practices | | |
| Scheduling Inspections <i>(risk-based, unscheduled inspections)</i> | ✓ | N/A |
| Standardized Inspection Forms <i>(consistent method to evaluate all requirements)</i> | X | X |
| Documenting Inspections <i>(inspectors document results and violation severity)</i> | X | ✓ |
| Corrective Action <i>(standard criteria and timelines for corrective action)</i> | X | N/A |
| <p>(a) We did not evaluate the program's practices for 6 of 16 categories of state law, regulation, or best practice listed above. We noted the categories we did not evaluate with a N/A. Source: LPA summarization of the Pet Animal Act, National State Auditor Association best practices, and Animal Facilities Inspection Program policies and procedures (audited).</p> | | |

Officials had multiple penalties they could pursue for facilities that failed inspections, including monetary fines (up to \$1,000 per violation), reducing the number of animals a facility was allowed to have onsite by selling or surrendering them, and revoking a facility's license. Officials also have the authority to immediately seize animals on reasonable grounds that the animals' health, safety, or welfare was endangered.

Program policy did not adequately address best practices related to legal enforcement and penalties were not always consistent, appropriate, or progressive.

- **Figure 1-2** on the next page summarizes best practices related to penalties. As the figure shows, to ensure penalties are consistent, appropriate, and progressively severe, policy should:
 - describe when it is appropriate for the program to penalize a facility.
 - specify the types of violations that warrant a fine compared to those that warrant more immediate or aggressive action, such as animal relinquishment.
 - provide guidance on how and when to escalate penalties for facilities that continue to fail inspections after initially being penalized by the program.
- Program policy was inadequate to ensure penalties were consistent, appropriate, or progressive. The program had a policy to generally penalize facilities after three consecutive failed inspections, but also allowed officials discretion to deviate from this rule. However, policy provided no additional guidance on when it was acceptable to deviate. Although program officials described an informal process, the program had no formal policy to consider the type or severity of violations when determining an appropriate penalty, nor did it have a policy addressing progressively severe violations. The program director told us he considers factors like the type and severity of violations and a facility's, inspection history in deciding when and how to penalize a facility.
- As **Figure 1-2** shows, the program's practices also were not adequate to ensure penalties were consistent, appropriate, and progressive.

Sources and Methods

- We compared program policies to National State Auditor Association best practices for regulatory programs to determine if its policies were adequate to ensure consistent, appropriate, and progressive penalties.
- We compared all 33 instances where a facility failed at least three consecutive inspections between 2013 and 2017 to program penalty data to determine if officials consistently assessed penalties against those facilities, per program policy.
- From those 33 cases, we selected a non-projectable, judgmental sample of five facilities that failed a subsequent inspection after being penalized by the program. We reviewed the inspection reports and legal documents to determine if penalties appeared appropriate given the circumstances and violations found in these cases. We could only conclude on the appropriateness of penalties in one of the five facilities because of weak program criteria.
- We also reviewed the same non-projectable, judgmental sample of five facilities from above to determine if the program assigned progressive legal penalties in these cases.

- Officials did not consistently pursue penalties after the third consecutive failed inspection in 21 of 33 cases (64%) between 2013 and 2017. However, we could not determine if that was appropriate because program policy lacked guidance on when it was acceptable to not penalize a facility after its third consecutive failed inspection.

**Figure 1-2
Summary of Program Policies and Practices to
Ensure Appropriate Penalties**

| Best Practice | Policy | Practice |
|--|--------|----------|
| Consistent Penalties <i>(process for when to penalize non-compliant facilities and when to use discretion to give facilities additional opportunities to pass an inspection)</i> | X | X |
| Appropriate Penalties <i>(process for which type of penalty to assign; e.g., fine, revoked license, etc.)</i> | X | X |
| Progressive Penalties <i>(process to escalate the severity of penalties as necessary)</i> | X | X |
| Source: LPA summarization of National State Auditor Association best practices, Animal Facilities Inspection Program policies and procedures, and Animal Facilities Inspection Program data (audited). | | |

- Officials did not assign appropriate penalties in one of five cases we sampled. **Figure 1-3** on the next page summarizes the inspection history and penalties for this facility. As the figure shows, the facility failed four inspections for violations including animal appearance, inadequate temperatures, and severe sanitization issues before it was penalized (\$2,000 fine). Over the next 2.5 years the facility continued to fail inspections for both repeat and new violations, and no action was taken to remove animals until its seventh failed inspection. Additionally, up to 18 months passed between re-inspections for this facility (which exceeds the program’s policy of about one month). Officials said department turnover and lack of resources contributed to the delays. Although there were no clear criteria for appropriate legal action, we expected the program to take faster and more severe penalties against this facility based on the number and type of violations. We evaluated program staffing and inspection timeliness in more detail in Question 2 on page 10.

- Officials did not assign progressively severe penalties in two of the five cases we sampled where facilities continued to fail inspections after being penalized by the program. Officials said they did not assign progressive penalties in one of these cases because the facility did not have serious violations, but they were unaware of the reason why progressive penalties were not assigned in the other case. Officials did assign progressive penalties in the three other cases. For example, one facility failed its third consecutive inspection for having damaged surfaces in animal enclosures, excessive debris and sanitation issues, and improper ventilation. The facility was required to pay a \$250 fine. The facility failed their next inspection about one year later for repeat violations and several new violations, such as insufficient shelter for one animal and pest control issues. The program escalated the penalties by requiring the facility to pay \$1,250 and gradually reduce the number of animals onsite from about 150 to 80 animals through sale, adoption, or surrender.

**Figure 1-3
Summary of One Facility's Inspection History and Penalties**

| Description of Violations (a) | Consecutive Failed Inspections | | | | | | | |
|--|--------------------------------|-----|-----|--------------|------|--------------|---|--------------------------|
| | 1st | 2nd | 3rd | 4th | 5th | 6th | 7th | 8th |
| Total Number of Violation Categories Found (out of 25) | 15 | 3 | 8 | 7 | 14 | 9 | 10 | 17 |
| Penalties Taken | None | | | Fine \$2,000 | None | Fine \$6,500 | License revoked Animals reduced by 60% | All animals relinquished |
| Cleaning and Sanitation (grime, urine, feces, and rusted surfaces; urine soaked bedding) | X | | X | X | X | X | X | X |
| Ventilation (inspectors eyes burned from ammonia smell) | X | X | X | X | X | X | X | X |
| Temperature (kennel building was too hot; lack of outdoor bedding in cold weather) | X | | | X | X | | | X |
| Spacing (crates were too small for animals) | X | X | | | X | X | X | X |
| Animal Appearance (matted fur, long nails, dental issues, swollen ears, underweight animals) | X | | X | | X | X | X | X |

Inspection Timeline



(a) Violations listed are a summary of serious violations found and are not an exhaustive list of all findings from the inspections. Source: Animal Facilities Inspection Program inspection reports and inspection and legal data (audited).

- Although the program has the authority to immediately seize animals when their health, safety, or welfare is endangered, it chose not to in recent years. Instead, the program used the threat of severe penalties to negotiate with facilities to voluntarily relinquish animals. Officials told us they prefer voluntary relinquishment because forced seizures required significant resources the program did not possess (e.g., a facility large enough to house seized animals). However, this practice led to cases where animals had health issues (e.g., underweight, missing or matted hair, severe tartar, distended abdomen, swollen ears from infection, etc.) that were not seized. Rather, these animals were either required to be seen by a veterinarian for diagnosis and treatment or were voluntarily relinquished by their owner after a legal proceeding.

The program must use discretion when penalizing non-compliant facilities but lacked guidelines for when and how to apply it across facilities.

- The program lacked well-defined guidelines to determine when it is appropriate to penalize facilities. The program's general rule is to penalize a facility after its third consecutive failed inspection. However, officials told us in certain situations they allow facilities additional opportunities to pass before taking legal action. For example, it may be appropriate to not to penalize a facility that failed three inspections but made substantive improvements between the second and third fails. Giving facilities additional opportunities to correct violations may be reasonable in some situations, but program policy lacked guidelines to ensure similar situations were handled consistently across facilities.
- The program lacked guidance on how to determine which types of penalties were appropriate given the circumstances. The program has multiple penalty options that range from minor penalties (e.g., a fine or requirement to reduce the number of animals onsite) to more severe penalties that could result in revoking a facility's license or seizing all the animals. The program must use its discretion to determine the type of penalty that is most appropriate. For example, it may be appropriate to fine a facility after three failed inspections but revoke its license after five failed inspections. The program did not have adequate guidance, such as a matrix or chart, to help ensure they pursued appropriate penalties or that they chose similar penalties for similar situations.

Not having a policy to ensure appropriate penalties increases the risk that facilities may continue to operate for longer than they should.

- In the example in **Figure 1-3**, program officials continued to work with the facility owner despite serious and repeat violations that were negatively affecting animals at the facility. Creating a policy on when and what penalties to assign could help ensure appropriate action is taken in these cases.

Question 1 Recommendations

1. Program officials should update their policy and procedure manual to correct deficiencies we identified in this question related to consistent inspections and appropriate penalties.

Question 2: Is the Animal Facilities Inspection Program adequately managed and staffed to effectively and efficiently carry out its responsibilities?

Answer: Although the program appeared to operate efficiently, some areas related to program management and staffing could be improved to help the program operate more effectively.

Staff Oversight and Training

The program inspects facilities to ensure compliance with state regulations and investigates complaints made by the public against animal facilities. The program used a risk-based inspection process, which means that facilities should have been inspected once every six months (high-risk facilities) to two years (low-risk facilities) depending on their inspection history. Inspectors were required to re-inspect facilities that failed an inspection to ensure all violations were addressed. Program officials can pursue penalties against facilities that failed multiple inspections or otherwise violated state laws and regulations. Additionally, program officials told us they reviewed inspectors' performance by periodically accompanying them on inspections and reviewing their reports for consistency and accuracy. Officials also told us they reviewed inspection data every three to six months to identify facilities that were past due for an inspection.

The program needed to improve key processes related to program oversight and training that were necessary to ensure it operates effectively.

- According to best practices and state law related to program oversight, the program should have a process to ensure its inspections and penalties are timely and appropriate. Additionally, the program should establish appropriate performance metrics for inspectors (e.g., number of inspections that should be completed annually) and provide adequate training to employees. As **Figure 2-1** on the next page shows, the program's policies and practices were not adequate in any of the areas we reviewed.

Sources and Methods

- We compared the program's policies to key oversight National State Auditor Association best practices and state law to determine if officials had an adequate process to oversee the program, including inspections and penalties.
- We selected several samples to determine how effective the program was in completing timely inspections.
- **Routine:** A non-projectable, judgmental sample of 760 inspections from 2013 to 2017 (16% of all inspections during this time). To select the sample, we selected facilities that failed an inspection in 2013 or were newly licensed after 2013 so that we could determine the facilities' inspection frequency. This method included more high-risk facilities than medium or low-risk facilities. Although this sample is not representative of all facilities, we can still draw conclusions regarding timeliness.
- **Re-Inspections:** A non-projectable, judgmental sample of 40 failed inspections from 2015 to 2017 (21% of total inspections). The sample primarily includes animal breeders and shelters because they account for the largest number of licenses in the state.
- **Complaints:** A non-projectable, judgmental sample of 49 complaints from 2014 to 2017 (20% of total complaints). We also selected this sample to primarily include animal breeders and shelters.

**Figure 2-1
Summary of Program Policies and Practices
Related to Management Oversight**

| Best Practice (a) | Policy | Practice |
|---|--------|----------|
| Managing Routine, Complaint, and Re-Inspections <i>(proactively identify upcoming inspections, set clear expectations on when to inspect facilities, and periodically review that inspections were timely)</i> | X | X |
| Managing Legal Penalties <i>(proactively identify and review failed inspections, periodically review that penalties were timely and appropriate)</i> | X | X |
| Setting Performance Metrics <i>(set appropriate performance metrics for inspectors; e.g., number of inspections to be conducted each year)</i> | X | X |
| Training Staff and Facility Owners (State Law) <i>(commissioner must train inspectors in reasonable standards of animal care, provide training in consultation with the Kansas State University College of Veterinary Medicine)</i> | X | X |
| <p>(a) The National State Auditor Association best practices provided a general framework for regulatory programs. We interpreted the generic framework to fit the specific components of the state's Animal Facilities Inspection Program, as described above.</p> <p>Source: LPA summarization of National State Auditor Association best practices, Animal Facilities Inspection Program policies and procedures, and Animal Facilities Inspection Program data (audited).</p> | | |

- Program officials need to improve their process to ensure inspections are timely. Officials told us they reviewed inspection data every three to six months to identify facilities that were past due for an inspection. However, officials did not have a process to proactively identify, and communicate to inspectors, facilities due for inspection prior to them becoming late. Although inspectors maintain their own inspection schedules, this added level of oversight would help reduce the risk that facilities become past due for inspection.
- Program officials also lacked a process to ensure facilities were penalized consistently. Although the program's inspection database documents failed inspections, officials did not use that database to track or identify facilities that may need to be penalized. Instead, they relied on inspectors to notify management when a facility failed consecutive inspections and may require penalization. Relying on inspectors to notify management of these situations increased the risk that facilities were not consistently penalized when necessary.
- The program did not set performance metrics for its inspectors, such as the number of inspections they should complete annually. Although officials expect inspectors to adhere to its risk-based scheduling policy, management lacked a systematic way to identify or monitor upcoming inspections, which prevented them from setting and monitoring performance metrics.

- The program has not offered statutorily required training in several years. State law requires program officials work with Kansas State University's veterinary program to provide animal training to program staff and to allow facility owners to attend. Officials told us they have not held this training since at least 2013. Officials told us they organized a training event in 2017, but it was not with Kansas State University and was primarily designed for facility owners, although inspectors attended as well.

Officials placed a significant amount of trust and responsibility on staff to ensure the program operates effectively.

- Officials trusted the inspectors and Department of Agriculture legal staff to effectively carry out their responsibilities and did not see a need to take additional oversight. However, officials agreed that adding formal processes to oversee these functions may help improve the effectiveness of the program.
- Although program officials told us they view training as a critical component of their program, it does not appear to have been a priority in recent years. Officials told us their relationship with Kansas State University’s veterinary program needs to be reestablished. Currently, the program primarily relies on inspectors to learn through on-the-job training administered by existing program staff.

A lack of program oversight likely contributed to several late inspections and inconsistent penalties against facilities.

- Inspectors were late completing 101 of the 760 (13%) routine inspections, 20 of the 40 (50%) re-inspections, and 17 of the 49 (35%) complaint inspections we sampled. Although most of the late routine inspections were three months late or less, a few were between one to two years late. Similarly, most of the late re-inspections and complaint inspections were up to three months late, but two re-inspections were three to five months late. A stronger process to oversee inspections could have helped prevent or address these late inspections sooner.
- Program officials did not penalize 21 of all 33 (64%) facilities that failed three consecutive inspections from 2013 to 2017, per their general rule in policy. Additionally, they did not assign appropriate or progressively severe penalties for a few facilities we sampled. More information about the results of our legal test work is in Question 1.

Staffing Levels

From 2011 to 2018 the program operated with three to four inspectors. At the time of this audit, the program was operating with two inspectors but was in the process of hiring a third. The program used a risk-based inspection process to ensure facilities were routinely inspected once every six months (high-risk facilities) to two years (low-risk facilities) depending on a facility’s inspection history. Inspectors also investigated complaints, performed pre-license inspections, and re-inspected facilities after a failed inspection. Inspectors were responsible for developing their own inspection schedule, which officials told us they periodically review for accuracy.

Sources and Methods

- We interviewed officials and gathered staffing information from animal facilities inspection programs in Kansas and a sample of four other states, including Colorado, Iowa, Missouri, and Nebraska.
- We selected these states because they were similar in size and function to Kansas’ program. However, upon further review, Colorado and Iowa’s programs had enough differences to prevent us from comparing their staffing levels with Kansas. We still used general staffing information gathered from interviews with those states as part of our analysis.

The state’s program was slightly understaffed compared to two neighboring states, and an additional inspector may help the program operate more effectively.

- There were no national staffing benchmarks for animal facilities inspection programs and program management did not have internal benchmarks for how many facilities should be assigned to each inspector. In the absence of national or program benchmarks, we compared staffing levels in Kansas’ program to those in Missouri and Nebraska.
- As **Figure 2-2** below shows, Kansas had a higher number of inspections per inspector (270) than the other two states (215 and 236). Additionally, the animal facilities programs in Colorado, Iowa, and Missouri said they had an investigative inspector position that Kansas did not have. This position was responsible for identifying and investigating facilities that operated without a license as well as other program duties as needed.
- Our review of inspection timeliness in Kansas showed a significant number of late inspections. Program officials told us they had between three to four inspectors for most of the timeframe we reviewed (2013 to 2018). However, they told us this number of staff prevented them from immediately re-inspecting facilities to ensure serious violations were addressed timely. An additional inspector, such as the investigative inspector position other states described, could help the program complete these and other critical inspections timely and bolster the program’s monitoring efforts to investigate unlicensed facilities.

**Figure 2-2
Comparison of Animal Facility Inspectors in Kansas and Two Other States**

| State | State Square Miles | Licensed Facilities | Inspector FTE (a) | Annual Inspections (b) | Inspections per Inspector | Frequency of Routine Inspections |
|-----------------|--------------------|---------------------|-------------------|------------------------|---------------------------|----------------------------------|
| Kansas | 81,759 | 941 | 3 | 811 | 270 | Risk Based (6 months to 2 years) |
| Nebraska | 76,824 | 657 | 3 | 709 | 236 | Risk Based (1 to 2 years) |
| Missouri | 68,742 | 2,035 | 12 | 2,579 | 215 | Annually |

(a) Kansas’ Animal Facilities Inspection Program operated with just two inspectors during our audit, but hired a third inspector as of October 2018.
 (b) The number of annual inspections for Kansas and Missouri are from calendar year 2017. The number of annual inspections from Nebraska is from fiscal year 2018.
 Source: Interviews with officials from the Kansas, Nebraska, and Missouri animal facilities inspection programs.

Program Efficiency

We did not identify any program inefficiencies compared to a small sample of other states.

- The program has taken multiple steps in recent years to help improve program efficiency. For example, program officials told us they used to inspect all animal facilities one to two times annually. Then, in 2013, the program switched to a risk-based review schedule, which allowed them to inspect low-risk facilities less often than high-risk facilities. Also, prior to November 2017, different facilities were held to different program regulations. Specifically, retail breeders were required to comply with more regulations than other facility types. In November 2017, the program amended state regulations, requiring all facilities to comply with the same regulations. Officials told us this reduced confusion among inspectors as to which set of regulations should have been used at which facility. Additional efficiency measures recently taken by the program are shown in **Figure 2-3** below.
- The four states we sampled did not describe any additional actions that would further increase the efficiency of Kansas’ program.

Sources and Methods

- We interviewed officials with Kansas’ program to identify any efficiency measures they have taken in recent years.
- We interviewed officials from the same four states as the previous section to understand their inspection process and identify any areas where Kansas’ program could become more efficient. These interviews focused on the states’ general inspection processes and did not include a detailed review of their policies, procedures, or funding.

**Figure 2-3
Summary of Recent Program Efficiency Actions**

| Description of Efficiency Action Taken | Benefit to Program |
|---|---|
| In 2013, the program moved to a risk-based routine inspection schedule. | Allowed staff to spend more time on high-risk facilities and less time on low-risk facilities. |
| In November 2017, program officials created a single set of regulations for all facilities to follow. | Easier for staff to inspect facilities because of greater consistency. |
| In August 2017, program officials streamlined their scoring process, making it easier to assign and assess scores. | Easier for inspectors to document the results of an inspection. |
| In 2018, the program transitioned to an electronic report format. Inspectors complete the report on-site. Data is uploaded automatically to central office. | Decreased the amount of time inspectors spend writing reports and uploading data to central office. |
| Source: Animal Facilities Inspection Program policy and program officials. | |

Question 2 Recommendations

1. *Program officials should create processes and policies to:*
 - *establish annual performance metrics for inspectors*
 - *monitor that all inspections and penalties are timely and appropriate.*
2. *Program officials should work with Kansas State University officials to provide the statutory required training.*
3. *Program officials should consider working with the Legislature to request an investigative inspector position.*

Question 3: To what extent have the conditions in commercial breeding operations in Kansas changed since our audit of the Animal Facilities Inspection Program in 2002?

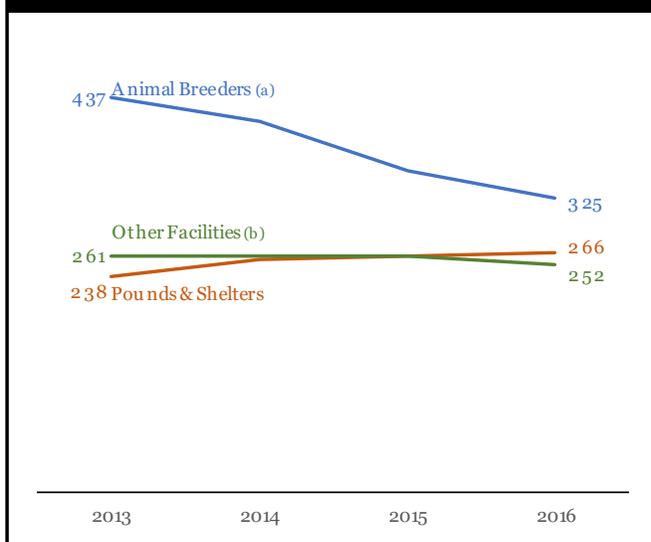
Answer: We were unable to determine how commercial breeding conditions changed since 2002 due to a lack of program outcome data. However, the number of licensed animal breeders and their percentage of failed inspections has declined slightly in recent years. Additionally, the program did not fully address most of the findings from our 2002 audit.

Sources and Methods

- To determine how program outputs changed in recent years we evaluated the number of licensed facilities from 2013 to 2016. We also evaluated the percent of failed inspections during the same time. These percentages were based on completed inspections only (i.e., total number of passed and failed inspections), and did not account for cases where inspectors attempted but were unable to complete an inspection because the facility owner was not present.

The audit question asked us to evaluate changes in the condition of the commercial dog breeding industry over the last several years. However, the program is not required to keep data on the number of ill, injured, or deceased animals and without this data we could not complete the analysis as originally intended. Instead, we focused our review on changes in program outputs from 2013 to 2016 (e.g., changes in the number of licensed facilities and percent of failed inspections). We chose this timeframe because there were no significant program changes during that time.

**Figure 3-1
Number of Licensed Kansas Facilities (2013 - 2016)**



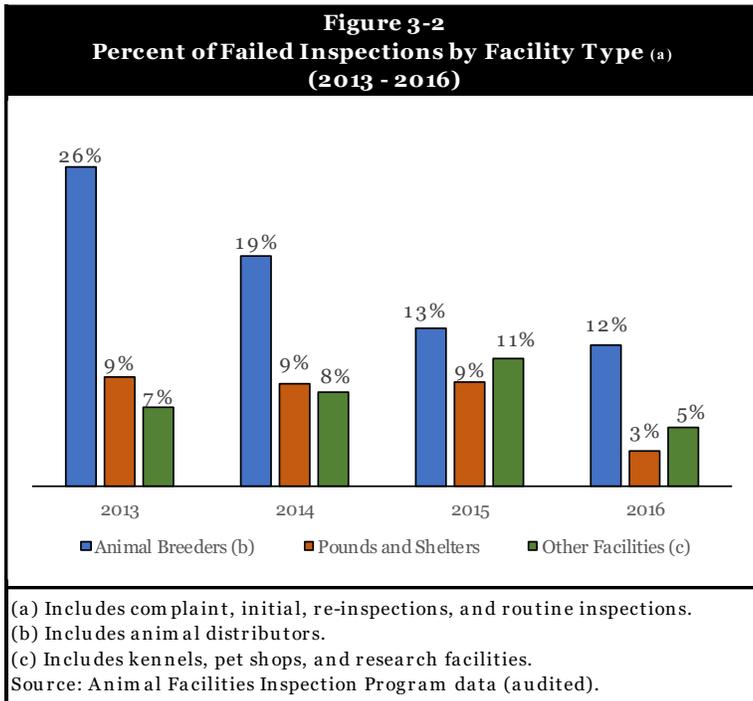
(a) Includes animal distributors
(b) Includes kennels, pet shops, and research facilities
Source: Animal Facilities Inspection Program data (audited).

Program Trends

With the exception of animal breeders, overall program trends have remained relatively stable since 2013.

- Figure 3-1** on the left shows the number of licensed facilities from 2013 to 2016. As the figure shows, only animal breeders have seen a significant change in licensed facilities since 2013, declining by 26% during that time. Meanwhile, the number of licensed pounds, shelters, and other facilities (kennels, pet shops, and research facilities) remained relatively stable. Program officials told us they were not certain what caused the decline in licensed animal breeders.

- Figure 3-2** below shows the percent of failed inspections by facility type. The program scores violations on a scale of zero to five based on severity and the number of animals affected. An overall score of five or higher is failing. As the figure shows, since 2013, all facility types failed a relatively low percentage of total inspections (3% to 26%). Animal breeders had the highest rate of failed inspections of any facility type; however, their rate of failed inspections declined from 26% in 2013 to 12% in 2016.



Previous Audit Findings

In August 2002, we issued an audit, *Animal Breeders and Sellers in Kansas: Determining Whether Improvements Have Been Made in the Regulation of This Industry*. The audit had multiple findings related to inadequate policies and practices of the state’s Animal Facilities Inspection Program at the time. We compared the findings from our prior audit to the findings of our current audit to determine if the program addressed our 2002 findings.

The program has fully addressed only one of the five problem findings from our 2002 audit.

- Figure 3-3** on the next page summarizes the five main problem findings from the 2002 audit. As the figure shows, the audit identified issues related to initial licensing, inspections, and penalties. It also contained a finding related to an inadequate policy and procedure manual.
- As **Figure 3-3** shows, program officials addressed our finding related to improperly issuing licenses. We reviewed a sample of 37 licenses and found none were issued prior to a passed pre-license inspection.
- Program officials did not fully address the four other findings from the 2002 audit. For example, this audit showed:

 - Program officials created a policy manual since the 2002 audit, but it was still inadequate in several areas related to the inspection process.

Sources and Methods

- To determine if the program still issued licenses prior to a facility passing an initial inspection, we selected a non-projectable, judgmental sample of pre-license inspections from 2016 to 2017. Our review was limited to these two years because prior to 2016, the program did not retain copies of prior licenses. Although not an issue for the program, it limited our review to these two years.

**Figure 3-3
Comparison of Findings from 2002 and 2018 Audits of the
Animal Facility Inspection Program**

| 2002 Audit Finding | Current Program Practice |
|--|--------------------------|
| The program's system for issuing licenses could have resulted in licenses being issued before a facility received pre-license inspection. | Addressed |
| The program did not have a cohesive policy and procedures manual related to inspectors' duties. | Partially Addressed |
| The seriousness of violations was not systematically considered in deciding whether facilities "passed" or "failed" inspections. | Partially Addressed |
| The program was not inspecting facilities as frequently as their policy required. | Not Addressed |
| The program did not have a documented, well-defined, and progressive system of penalties. | Not Addressed |
| Source: 2002 LPA audit of the Animal Facilities Inspection Program (02-18), Animal Facilities Inspection Program policy and inspection and legal data (audited). | |

- Program officials created a policy to score violations on a scale of zero to five based on the number of animals affected and the severity of the violation. However, policy lacked guidance on how to use these conditions to calculate an inspection score.
- The program did not conduct a significant number of routine, re-inspection, or complaint inspections in a timely manner (see page 10).
- The program still did not have a documented, well-defined, and progressive system for assigning penalties (see page 4).

CONCLUSION

The Animal Facilities Inspection Program faces challenges typical for small programs with limited staffing and funding. The program was funded for three full-time equivalent inspectors with an annual budget of about \$425,000 in fiscal year 2017. Nonetheless, the program was responsible for regulating approximately 940 licensed pet animal facilities in Kansas. Because of their small size, the program relied significantly on staff to do their job appropriately, efficiently, and effectively instead of through robust policies and procedures. The program's clear priority was performing inspections, and other responsibilities like policy development, tracking performance outcomes, and program oversight was less of a priority. It is especially important for the program to address these issues because of the amount of discretion their work requires. Thorough and robust policies and oversight processes are important to ensure the program is operated consistently and efficiently.

APPENDIX A

On November 14, 2018 we provided copies of the draft audit report to the Department of Agriculture. Its response is included as this appendix. Department officials generally concurred with the report's findings and agreed to implement our recommendations. Officials noted that our finding on inspection timeliness could be affected by no-contact inspections (i.e., inspections that could not be completed because a facility owner was not present). However, our methodology accounted for no-contact inspections. If the inspector returned within one month of the no-contact inspection, we did not count it as late because that was within program officials' expected timeframe. Following the agency's written response is a table listing the department's specific implementation plan for each recommendation.

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JACKIE McCLASKEY, SECRETARY OF AGRICULTURE

December 4, 2018

Justin Stowe
Legislative Post Auditor
800 SW Jackson, Suite 1200
Topeka, KS 66602-2212

Mr. Stowe:

The Kansas Department of Agriculture appreciates the opportunity to provide comments on the findings of the Legislative Post Audit of the Animal Facilities Inspection program.

Supporting the pet animal industry has been a priority for the agency as evidenced by top notch inspectors and program staff devoted to the program as well as the agency's commitment of substantial financial resources to maintain the program at its current level. The program has experienced significant underfunding from fees and, despite this shortfall, it was maintained at a level far beyond what is required in statute.

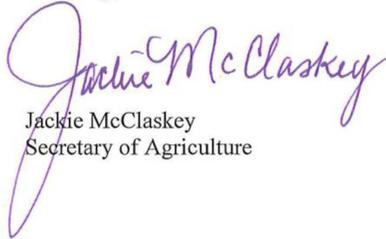
Statutorily, the program is required to conduct inspections for new facilities and respond to complaints. However, despite considerable funding challenges the program has maintained a regular inspection frequency as defined in regulation. The audit determined that approximately 13 percent of the facilities over the time period of 2013–2017 had not been inspected at the frequency as defined in regulation. It is worth noting that approximately 25 percent of those late inspections had previous attempted inspections — when an inspector presents themselves at a facility to perform a routine inspection and the facility was not made available for inspection because the owner or their designee was not available (this is referred to as a no-contact inspection). Therefore, by the time the inspector was on site later and the facility was made available, it was outside of the inspection frequency. In 2018, the legislature removed our ability to provide prior notice of inspection to our top-performing facilities. Operating under this new framework is expected to increase the number of no-contact inspections.

In response to the deficiencies identified by the audit regarding a need for additional policies, KDA will continue to document best practices when conducting inspections as well as enforcement actions. Due to the vast differences in licensee types, developing a complete policy manual to address all aspects of an inspection would not be practical. While we will increase documentation, we will continue to rely on the professional judgment of our inspectors and program staff to make the best recommendation or take the most appropriate actions in response to facility condition.

Finally, in response to the recommendation of creating an “investigative investigator” position, this would require additional program funding either from increased fees or state general fund enhancements. If it is the will of the legislature to create this position and a funding option was presented, then we would welcome the prospect of this new position.

We appreciated working with LPA staff to complete this audit. Thank you for the opportunity to provide these comments. KDA will continue to support the pet animal industry within Kansas and to uphold our obligations.

Sincerely,



Jackie McClaskey
Secretary of Agriculture



Dr. Justin Smith
Animal Health Commissioner

Itemized Response to LPA Recommendations

Audit Title: Department of Agriculture: Evaluating the Animal Facilities Inspection Program

Agency: Kansas Department of Agriculture

| LPA Recommendation | Agency Action Plan |
|--|---|
| Question 1 | |
| 1. Program officials should update their policy and procedure manual to correct deficiencies we identified in this question related to consistent inspections and appropriate penalties. | The program will continue to add more details to its current policy and procedure manual to better address the deficiencies that were identified. In addition, the program will formally publish its legal policies within the program's policy and procedure manual. |
| Question 2 | |
| 1. Program officials should create processes and policies to: | |
| a. Establish annual performance goals for inspectors. | The program currently has existing performance goals within its annual performance review process for inspectors to follow the frequency schedule laid out in the current policy manual. However, the program will continue to work on finding a potential software that may provide additional data that will help management better predict a measurable goal for each inspector with its current frequency schedule. |
| b. Monitor that all inspections and penalties are timely and appropriate. | The program has already started conducting semi-monthly checks on inspection frequency and notifying inspectors of upcoming or overdue inspections. The program will continue to seek potential that may better capture this information. Lastly, the program plans to formally document its penalty matrix within the policy and procedure manual to better ensure penalties are consistent and timely. |
| 2. Program officials should work with Kansas State University officials to provide the statutory required training. | The Division of Animal Health currently has a good working relationship with Kansas State University. Unfortunately, there have not been any recent opportunities for the Animal Facilities Inspection Program to enhance its education as required in statute. That said, the program will continue to seek out opportunities with K-State to fulfill this statutory requirement. |
| 3. Program officials should consider working with the Legislature to request an investigative inspector position. | Currently each inspector spends a few hours a week investigating unlicensed facilities in their assigned area and responds to complaints or concerns brought forward to the agency. The program considers this sufficient. |

APPENDIX B

Additional Information on the Animal Facilities Inspection Program's Inspection and Facility Types

| Inspection Type | Definition | 2017 Inspections |
|---|--|---------------------------------|
| Pre-License | Facility owners must pass an initial inspection before receiving an animal facility license from the program. | 98 |
| Routine | A periodic inspection to ensure facilities comply with the state's animal facility regulations. All licensed facilities should be inspected once every six months to two years depending on their inspection history. | 651 |
| Re-Inspections (a) | Facilities that fail an inspection should be re-inspected to ensure prior violations were addressed. Most re-inspections should occur within about 30 days from the last failed inspection. | |
| Complaint | An inspection to follow up on a complaint made by the public against a licensed or unlicensed animal facility. Complaints should be investigated within 3 to 10 days depending on the seriousness of alleged violations. | 62 |
| License Types | Definition | Active Licenses as of June 2018 |
| Animal Breeder | Premises with a total of six or more litters of dogs or cats, or 30 or more dogs or cats are sold, offered, or maintained primarily at wholesale for resale. | 80 |
| Retail Breeder | Premises with a total of six or more litters of dogs or cats, or 30 or more dogs or cats are sold, offered, or maintained for sale primarily at retail, not for wholesale. | 140 |
| Hobby Breeder | Premises where a total of three to five litters of dogs or cats are produced for sale and sold, offered, or maintained for sale per license year. Only applied if amount of animals for sale or sold is less than 30. | 89 |
| Animal Distributor (b) | Any person who operates a premises engaged in the business of buying for resale dogs or cats, or both. | 19 |
| Pet Shop | Premises where dogs, cats, or any other animal (excluding fish) are sold at retail and not for resale to another. | 97 |
| Boarding or Training Kennel | Premises where four or more dogs or cats are maintained in any one week during the license year for boarding, training, or similar purposes for a fee or compensation. | 174 |
| Pounds and Shelters | Facilities used to house, contain, impound, or harbor any seized stray, homeless, relinquished, or abandoned animal. This includes facilities that maintain a total of 20 or more dogs or cats for adoption. | 275 |
| Rescue Network | Premises that provide temporary care for one or more dogs or cats not owned by an animal shelter that maintain a central facility for keeping animals. | 61 |
| Research Facility | Any place, laboratory, or institution, (except schools and colleges) at which any scientific test or experiment involves the use of living animals is conducted. | 6 |
| <p>(a) Counts for routine and re-inspections are combined because the inspection data did not consistently distinguish between these two inspection types. Additionally, we included counts of full and focused facility re-inspections.</p> <p>(b) Includes in-state distributors (5), out-of-state distributors (4), and facilities licensed as animal breeders and distributors (10).</p> <p>Source: The state's Pet Animal Act and Animal Facilities Inspection Program data (audited).</p> | | |