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The Rundown podcast transcript for a performance audit report titled ***Evaluating the Department of Agriculture's Price Verification Inspection Process*** – Released November 2020

Andy Brienzo, Host and Principal Auditor: [00:00]

From the Kansas Legislative Division of Post Audit, this is The Rundown, your source for news and updates from LPA, including performance audits recently released to the Kansas legislature. I'm Andy Brienzo. In November 2020, LPA released a performance audit examining the Kansas Department of Agriculture's price verification inspection process. I'm with Josh Luthi, senior auditor at Legislative Post Audit, who supervised this audit. Welcome to The Rundown, Josh.

Josh Luthi, Senior Auditor and Supervisor: [00:33]

Thanks, Andy. Glad to be here.

Andy Brienzo, Host and Principal Auditor: [00:35]

So, this audit actually follows up on a March 2019 limited-scope audit that identified issues with the Department of Agriculture's or KDA's inspection coverage in this area. So, what did that audit find and how does this audit expand on the work that LPA did at that time?

Josh Luthi, Senior Auditor and Supervisor: [00:55]

The March 2019 limited-scope audit looked at whether KDA's price verification inspections covered retail businesses across the state. That audit determined KDA's inspections did not provide good coverage of retail businesses in Kansas. The audit also identified a few issues LPA could investigate further if the Legislative Post Audit Committee were to approve another audit looking at price verification inspections. The committee did approve another audit and that's what I'm here to talk about with you today. This audit, the quote unquote full price verification audit extends on the limited scope in two ways. First, it entails the results of KDA's price verification inspections from fiscal years 2018 through 2020 and second, it addresses how other states handle inspection coverage for price verification inspections.

Andy Brienzo, Host and Principal Auditor: [01:38]

So, it looks like KDA's weights and measures program does a few different types of inspections. So, tell me about these inspection types, which ones the team focused on for this audit, and how the inspections the team reviewed work.

Josh Luthi, Senior Auditor and Supervisor: [01:51]

Right. So, the Weights and Measures Program has two divisions. One division looks at petroleum related issues and it does things like inspect gas pumps annually. We didn't look at that division as part of this audit. I only mentioned it so you know it exists. The division we did look at was the Marketplace Equity Protection Program or MEPP. That division oversees weighing and measuring devices in the state and that includes things like scales, packaged labels, and point-of-sale systems. These are the three main things the MEPP inspects, although it does have some other responsibilities. Because the audit questions focused on price verification inspections, we only looked at the work KDA does with point-of-sale systems. Now, a point-of-sale system is whatever device or devices a business uses to determine how much to charge consumers when they buy stuff. So, think like a checkout register. These systems might have a scale attached to them, but they don't have to and to check these what KDA does are these things called price verification inspections. We've said that phrase several times already. These inspections check where the retail businesses point-of-sale systems charge consumers according to advertised prices. In other words, if you see item at the store with a posted price of \$1, these inspections check whether you'd actually get charged \$1 at checkout. Under state law, it's unlawful for businesses to charge consumers something other than the prices they advertise. To do an inspection, a KDA inspector will go out to a retail business, they'll select 50 or a hundred items, and they'll check the prices of those items by scanning them at the register or with like a portable price gun. They'll compare those scan prices to the posted prices, including any advertised sales or deals. The scan prices should match the advertised prices. If a scan price doesn't match the advertised price, that's an error. If more than 2% of items checked result in errors, then the business fails inspection. So, if an inspector checks a hundred items, no more than two items can have a price discrepancy.

Andy Brienzo, Host and Principal Auditor: [03:46]

So, as part of answering question one, the team reviewed KDA's price verification inspection coverage. What did you do to determine this and what did you find?

Josh Luthi, Senior Auditor and Supervisor: [03:57]

To assess KDA's inspection coverage, we looked at two things. First, we looked at the percentages of unique businesses in Kansas that KDA inspected. In the years we looked at, KDA inspected 926 unique businesses. According to the US Census Bureau, there were roughly 10,000 retail businesses in Kansas in 2018. So, based on that, we estimated KDA inspected about 9% of all retail businesses in the state over the three-year period we looked at. The second thing we did was look at the counties in which KDA conducted inspections and what we found was that KDA didn't consistently do inspections in all parts of the state. For example, in 2018, KDA didn't do any price verification inspections in southeast Kansas. According to KDA officials, this was because the inspector position that covered the region was vacant at the time, but in general, we think this means KDA's inspection coverage is pretty limited as the limited scope [audit] found, This limited coverage is at least in part because KDA generally prioritizes the scale inspections over price verification inspections.

Andy Brienzo, Host and Principal Auditor: [04:56]

So, the team also reviewed price verification inspection results from fiscal years 2018 to 2020 and it looks like businesses failed most inspections conducted during these years and that under charges were a little more common than overcharges. Tell me more about these things.

Josh Luthi, Senior Auditor and Supervisor: [05:14]

Yeah. KDA did about 1,800 price verification inspections in the three years we looked at and you might recall, I just told you that KDA inspected 926 unique businesses. So, what this means is that KDA inspects some of those businesses more than once. For example, we know KDA inspected one business nine times. And like you said, businesses failed most of the inspections KDA did. They failed about 60% of those 1,800 inspections. So, more often than not, it wasn't uncommon for businesses to fail consecutive inspections either. On average, about 5% of the items inspectors checked in an inspection were mispriced. That means about one in 20 items inspectors looked at were mispriced. To pass an inspection, no more than one in 50 can be mispriced. And when those items were mispriced, they were typically mispriced by less than \$5. And like you said, those mispriced items were also more frequently undercharges than overcharges. A little more than half were undercharges and a little less than half were overcharges. And to briefly explain what those are an under charges when you pay less at checkout than you expected. For example, if you pick up an item with a \$2 price tag, but then you go and pay \$1 at checkout, that's an undercharge and overcharge is the opposite. It's where you see, let's say a \$1 item on the shelf, but at checkout you get charged \$2. Based on KDA's inspection results, undercharges seem a little more common than overcharges, but it's important to remember KDA's inspectors don't necessarily check the same items consumers tend to purchase. So, consumers may run into different numbers of undercharges or overcharges in their personal shopping experiences.

Andy Brienzo, Host and Principal Auditor: [06:53]

What is KDA's policy for handling follow-up inspections and how did they handle these in reality?

Josh Luthi, Senior Auditor and Supervisor: [07:00]

When a business fails an inspection it's KDA's policy to do a follow-up inspection. By policy, KDA should follow up with the business after somewhere between one and four months, depending on the extent to which that business failed his prior inspection. To check whether this happened, we looked at whether KDA followed up on about 500 failed inspections from September 2018, through August 2019. We looked at this specific time period to avoid issues with changes to Katie's follow-up criteria and issues with COVID-19, which prevented KDA from conducting inspections in part of fiscal year 2020. We determined KDA didn't follow up timely on about 75% of those inspections we looked at. For some failed inspections, KDA didn't follow up at all.

Andy Brienzo, Host and Principal Auditor: [07:41]

So, these follow-up inspections can lead to things called summary and civil penalty orders. So, what are these orders? What's KDA's policy for issuing them? And again,

how do they handle them in reality?

Josh Luthi, Senior Auditor and Supervisor: [07:54]

Yeah. So, a summary order is an official legal notice informing a business that they're not in compliance with state law. A civil penalty order is basically a fine KDA can issue when businesses fail to achieve compliance with state law. Now state law doesn't require KDA to issue these orders at specific points. It just gives them the ability to do so if they desire. KDA policy says KDA may issue a summary order after a business fails two consecutive inspections with overcharges, KDA policy then says KDA may issue a civil penalty order if a business has received a summary order and then continues to fail inspections with at least three additional overcharges, but the main language in those policies mean the KDA won't necessarily issue these orders as soon as businesses are eligible for them. So, we looked at a few businesses inspection histories to get a sense for how KDA actually handles these legal actions and practice. And please keep in mind, we didn't select these businesses randomly. So, you can't generalize our findings. That said, we think it's unlikely KDA handled these businesses significantly differently than they handle the other businesses at which we didn't look. So, first of all, we looked at four businesses to which KDA issued civil penalties. We trace those four businesses' inspection histories back to calendar year 2013 to see what led up to the penalties. And what we found was that KDA issued legal orders later than it could have. For example, we determined KDA could have issued civil penalties to the businesses after about four failed inspections. Instead, KDA issued civil penalties after these businesses failed eight to 10 inspections. This means KDA sometimes waited years longer than they needed to fine businesses. And the fines KDA issued weren't especially onerous. For example, the largest fine issued to a business in the years we looked at total about \$5,000. We also looked at a single business to which KDA could have issued an illegal order, but didn't. Again, we didn't select this business randomly, so you can't generalize our results. Anyway, that one business failed six consecutive inspections between June 2018 and October 2019 after which KDA conducted no further inspections. KDA could have issued a fine after a June 2019 inspection, but didn't. So, what this means is this business was inspected six times, failed six times, and essentially nothing happened to it.

Andy Brienzo, Host and Principal Auditor: [10:15]

What might be the effects of KDA's methods for responding to failed inspections?

Josh Luthi, Senior Auditor and Supervisor: [10:23]

That KDA doesn't respond to failed inspections timely probably means businesses don't feel much pressure to improve their price accuracy and that might explain why some businesses repeatedly fail inspections. You know if an inspector tells you they're going to come back in four months and you don't see them again for a year, you might get the sense that this isn't a major issue for you to be concerned about. Likewise, if you go years without getting a fine, you might not have as much motivation to improve your price accuracy quickly. It's possible that if KDA did follow-ups more timely and it was more aggressive with penalties, businesses would improve their price accuracy more quickly. You know, if that's true, then it could ultimately mean that KDA has to do fewer follow-up inspections because businesses

are failing inspections less frequently that might free up additional resources for KDA to inspect more unique businesses.

Andy Brienzo, Host and Principal Auditor: [11:13]

For question two, the team reviewed other states' price verification inspection processes. And although question two focused on inspection coverage, it looks like the team concluded that coverage may not actually be the heart of the issue. Tell me more about that.

Josh Luthi, Senior Auditor and Supervisor: [11:29]

Like I said earlier, we do think KDA's inspection coverage is limited, but we weren't sure that simply doing more inspections is the best response. As we just discussed, at the businesses KDA inspected recently failed most of their inspections and KDA's having trouble responding timely to those failed inspections. According to KDA officials, this is because of the Weights and Measures Program has limited staffing resources. For example, they currently have only four inspectors doing scale price verification and packaging inspections across the state. They also reported having limited administrative resources that are sometimes occupied doing things like overseeing licensed private scale inspectors throughout the state. We therefore didn't think KDA would likely be able to do even more inspections or if it did it might just make issues with untimely responses to failed inspections worse. If the purpose of these inspections is at least in part to get businesses into compliance with state law, simply adding more inspections to the pile might not actually do any good. What may be more important is figuring out how to get businesses into compliance with state law faster. That said one of the audit questions asked what other states do to ensure adequate inspection coverage and we wanted to answer that question, so that's what we'll talk about now.

Andy Brienzo, Host and Principal Auditor: [12:42]

So what other states did you review and what did you find out about them?

Josh Luthi, Senior Auditor and Supervisor: [12:45]

Yeah, we looked at Oklahoma, Missouri, and Colorado because they're neighboring states. We also looked at Ohio and Pennsylvania because they use some strategies we wanted to learn more about such as working with local governments to conduct inspections and while not all state inspection programs are exactly the same we thought they were similar enough to be reasonable points of comparison. Now, what we learned was that none of the States that we reviewed use specific criteria to determine whether they achieve adequate inspection coverage for price verification inspections, and none of these states prioritize price verification inspections, either like Kansas, these States tend to prioritize other kinds of inspections like scale inspections. Further, none of the states we looked at maintain complete inventories of all retail businesses or point-of-sale systems in their states. Some officials told us they thought doing this would be infeasible. Instead, officials in other states generally opine that their coverage was adequate because businesses typically pass inspections and because their programs get fewer consumer complaints. However, we weren't convinced these were good criteria for evaluating coverage. For example, it's not clear consumers know they can complain to weights and measures

programs about pricing issues. And even if they do, it's not clear they'd be willing to spend the time doing. So, we also looked at some guidance. The National Institute of Standards and Technologies or NIST publishes regarding price verification inspection procedures. As part of this, we also interviewed a NIST official. The guidance doesn't say how many businesses a jurisdiction should expect to achieve adequate coverage. The NIST official we spoke with told us programs should use data and consider available resources to plan future inspections. So unfortunately the bottom line here is we didn't identify any clear criteria for determining what kind of inspection coverage is adequate.

Andy Brienzo, Host and Principal Auditor: [14:28]

So, although you may not have identified clear criteria about determining the adequacy of inspection coverage, what strategies employed by the other states that you looked at might help Kansas increase its inspection coverage and what are their benefits and drawbacks?

Josh Luthi, Senior Auditor and Supervisor: [14:45]

Yeah. So, officials in other states told us about three strategies. Kansas might be able to use that might it increase its inspection coverage, but they each kind of have some pros and cons to them. So, one strategy was ignoring undercharges when deciding whether to follow up with a business that failed inspection. Officials in Colorado, Oklahoma, and Pennsylvania told us they don't count undercharges as areas in their inspections. In Kansas, undercharges are unlawful. So, we don't go so far as to say, KDA shouldn't count them as errors at all, but KDA could choose not to follow-up with a business that fails an inspection only with undercharges. This could reduce KDA's follow-up burden and let them get to more unique businesses. The downside though is it means KDA wouldn't be following up with businesses with known price accuracy issues in favor of getting to more unique businesses. The other two strategies we heard about involve working with local governments or private businesses to basically delegate or share inspection responsibilities with them. For example, in Ohio, local governments assist with things like price verification inspections, because they're required to do so by law. Pennsylvania has a program that lets businesses get certified to basically self-inspect and report their results to the state. Either of these strategies would mean there would be more people in Kansas doing more inspections and we think that would probably increase coverage, but without changes to state law or the creation of some sort of incentive, it's unlikely local governments or private businesses would be willing to do these things voluntarily. These sorts of approaches would also probably take some time and resources to get set up and running. So, they're probably not an immediate solution. We also heard from the NIST contact we interviewed that Kansas could use a risk-based strategy. This is sort of a fourth bonus strategy that might help the state be more effective with its inspections, but it wouldn't necessarily increase coverage and this strategy would basically mean using program data and considering available resources to identify inspection priorities. For example, if KDA knows it can only do a certain number of inspections in a given month, it might use program data to do something like identify the businesses with the most price accuracy issues and prioritize working with those businesses. Like I said, though, this strategy wouldn't necessarily increase inspection coverage. It might even mean KDA inspects fewer

unique businesses in favor of focusing on bringing specific businesses into compliance with state law. This might allow KDA to make more effective use of its limited resources.

Andy Brienzo, Host and Principal Auditor: [17:15]

Finally, what's the main takeaway of this report?

Josh Luthi, Senior Auditor and Supervisor: [17:18]

I think the main takeaway is that price verification inspections reveal some Kansas businesses have price accuracy issues, but KDA's current approach to these inspections that may not be effective at increasing businesses' price accuracy and since KDA has limited resources it has to split between multiple kinds of inspections, the question is how to best allocate resources to price verification inspections relative to the state's other priorities. That though is ultimately a policy decision for entities like KDA and the legislature to consider.

Andy Brienzo, Host and Principal Auditor: [17:50]

Josh Luthi is a senior auditor at Legislative Post Audit. He supervised an audit examining the Department of Agriculture's price verification inspection process. Thank you again for joining me today, Josh.

Josh Luthi, Senior Auditor and Supervisor: [18:02]

Yep. Thank you, Andy.

Andy Brienzo, Host and Principal Auditor: [18:03]

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