

Report No. 2024-021
September 2023

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

**DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES**

State Hemp Program



Sherrill F. Norman, CPA
Auditor General

Commissioner of the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services is created by Section 20.14, Florida Statutes. The head of the Department is the Commissioner of Agriculture. The Honorable Nicole “Nikki” Fried served as Commissioner during the period of our audit.

The team leader was Jay Molstad, CPA, and the audit was supervised by Christi Alexander, CPA.

Please address inquiries regarding this report to Christi Alexander, CPA, Audit Manager, by e-mail at christialexander@aud.state.fl.us or by telephone at (850) 412-2786.

This report and other reports prepared by the Auditor General are available at:

FLAuditor.gov

Printed copies of our reports may be requested by contacting us at:

State of Florida Auditor General

Claude Pepper Building, Suite G74 · 111 West Madison Street · Tallahassee, FL 32399-1450 · (850) 412-2722

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

State Hemp Program

SUMMARY

This operational audit of the Department of Agriculture and Consumer Services (Department) focused on the implementation and administration of the State Hemp Program. Our audit disclosed the following:

Finding 1: The Department sometimes denied hemp cultivation licenses without valid cause.

Finding 2: The Department did not always timely notify hemp cultivation license applicants of apparent errors and omissions or retain records of such communications.

Finding 3: The Department did not always retain documentation evidencing the basis for Department hemp cultivation licensing decisions, the proper inspection of licensees, or the appropriate approval and oversight of industrial hemp pilot projects.

Finding 4: The Department contracted with a service organization to provide information technology (IT) services for the online hemp cultivation license application. However, the Department did not take steps to reasonably ensure that service organization controls relevant to the IT services performed on behalf of the Department were suitably designed and operating effectively.

BACKGROUND

The Department of Agriculture and Consumer Services (Department) was created and organized consistent with State law¹ to support and promote the State's agriculture, protect the environment, safeguard consumers, and ensure the safety and wholesomeness of food. The Department operates through 12 divisions and 12 offices and, to perform the Department's varied functions, including the State Hemp Program, the Legislature appropriated to the Department \$1.99 billion for the 2022-23 fiscal year and funded 3,876.25 positions.²

Consistent with the Federal Agricultural Improvement Act of 2018 (Farm Bill), State law³ defines hemp as the plant *Cannabis sativa L.* and any part of that plant, including seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that have a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis. The Farm Bill removed hemp from the list of controlled substances and authorized states to take primary regulatory authority over hemp production by submitting a plan to the United States Secretary of Agriculture for monitoring and regulating the production of hemp.

State law⁴ serves as the State Hemp Plan for purposes of the Farm Bill and establishes within the Department the State Hemp Program to regulate the cultivation of hemp in the State. The Department,

¹ Section 20.14, Florida Statutes.

² Chapter 2022-156, Laws of Florida.

³ Section 581.217(3)(d), Florida Statutes.

⁴ Section 581.217, Florida Statutes.

Division of Plant Industry, is responsible for licensing hemp cultivation within the State, conducting random inspections of each licensee at least annually, maintaining a registry of land on which hemp is cultivated or has been cultivated within the past 3 years, and making rules to administer the State Hemp Program. The Department is also responsible for authorizing and overseeing industrial hemp pilot projects at selected State universities and colleges to research industrial hemp and any aspect of cultivation, harvesting, processing, market research, and sales of approved industrial hemp products.⁵

FINDINGS AND RECOMMENDATIONS

Finding 1: License Denials

State law⁶ requires persons seeking a license to cultivate hemp to submit to the Department a full set of fingerprints with a license application. The Department is to forward the fingerprints to the Department of Law Enforcement (DLE) for processing by both the DLE and the Federal Bureau of Investigation. Any arrest record identified is to be reported to the Department and the Department is to deny (or not renew) a license application if an applicant (or licensee) has falsified any information on the application or has been convicted of a felony relating to a controlled substance under State or Federal law within 10 years of license application. Hemp cultivation licenses must be renewed annually. In October 2021, the Department revised State Hemp Program rules⁷ to not require a licensee to submit a full set of fingerprints for any person whose fingerprints were submitted as part of the application for the license being renewed.

As part of our audit, we examined Department records for 33 applicants that were denied a hemp cultivation license (either through an initial or renewal application) during the 2022 calendar year and that had a criminal history check status of “Results Not Received.” Our examination found that 17 of 20 renewal applicants (85 percent) had been denied license renewal because no new fingerprints had been submitted to the Department, although all 17 license renewal applications were submitted after Department rules were revised removing the fingerprinting requirement and the applications included no persons requiring new fingerprinting. According to Department management, 2 of the 17 applicants had reapplied and been granted licenses and 2 other applicants rescinded their applications in response to the Department’s request for additional information. Although Department management indicated that the other 13 applicants did not respond to multiple communications from the Department, the justification for the Department’s rejection of the applications was not appropriate based on Department rules. In response to our audit inquiry, Department management indicated that the Department encountered challenges in implementing the fingerprint criminal history check rule change.

Denying hemp cultivation license renewal applications that meet the requirements for licensure limits applicants’ opportunities to conduct lawful business. Additionally, maintaining complete records of all licensing decisions made, including correspondence with applicants, would enhance the Department’s ability to demonstrate the basis for licensing actions.

⁵ Section 1004.4473, Florida Statutes.

⁶ Section 581.217(5), Florida Statutes.

⁷ Department Rule 5B-57.014(5)(c), Florida Administrative Code.

Recommendation: We recommend that Department management enhance hemp cultivation licensing processes to ensure that both initial and renewal license applications are appropriately evaluated against the applicable requirements.

Finding 2: Error and Omission Letters

State law⁸ provides that, upon receipt of a license application, the Department is to examine the application and, within 30 days of receiving the application, notify the applicant of any apparent errors or omissions and request any necessary additional information. Pursuant to State law, the Department cannot deny an applicant a license for failing to correct an error or omission or to supply additional information unless the Department timely notifies the applicant of the error or omission.

During the period January 2021 through December 2022, the Department received 2,037 hemp cultivation license applications. We examined Department records for 44 of the 679 hemp cultivation license applications that were either denied during the period January 2021 through December 2022 or were noted as pending at the end of either the 2021 or 2022 calendar year and found that the Department did not always review license applications within the statutory time frame and, therefore, did not always timely notify applicants of any application errors or omissions. Specifically, our audit procedures disclosed that, for 17 of the 44 license applications (39 percent), the Department examined the applications 34 to 172 days (an average of 119 days) after receipt. Additionally, according to Department management, error and omission notifications sent to applicants were not routinely retained.

According to Department records, the delays in examining the applications were primarily due to the criminal history check process. Specifically, in 16 cases the applicant had submitted invalid or out-of-date information to the Division of Licensing for criminal history check purposes and, in the other instance, an oversight in reviewing criminal history data by Division of Plant Industry personnel contributed to the delay.

Timely examination of hemp cultivation license applications and documented notification to applicants of any apparent errors or omissions would better ensure that the Department receives accurate and complete information to promptly process license applications in accordance with the time frame established in State law.

Recommendation: We recommend that Department management enhance controls to ensure that hemp cultivation license applications are timely examined, applicants are notified of apparent errors and omissions in accordance with State law, and records of such communications are retained in Department records.

Finding 3: Records Retention

State law⁹ requires the Department to maintain public records in accordance with the records retention schedule¹⁰ established by the Department of State, Division of Library and Information Services. The

⁸ Section 120.60(1), Florida Statutes.

⁹ Section 119.021(2)(b), Florida Statutes.

¹⁰ State of Florida *General Records Schedule GS1-SL for State and Local Government Agencies*.

schedule specifies that each agency is responsible for ensuring that any and all auditable records are maintained for as long as necessary to meet that agency's audit requirements.

Our audit disclosed that the Department did not always retain documentation evidencing the basis for Department hemp cultivation licensing decisions, the proper inspection of licensees, or the appropriate approval and oversight of industrial hemp pilot projects. Specifically:

- State law¹¹ requires the Department to conduct random inspections, at least annually, of each hemp cultivation licensee to ensure that only certified hemp seeds are being used and that hemp is being cultivated in compliance with State law. Our examination of Department records for 40 of 744 hemp cultivation licenses issued during the 2021 calendar year found that the results of 23 licensee inspections were not properly documented. For example, for 10 inspections, no inspection form was maintained in Department records evidencing the procedures performed and outcome of the inspection.
- Our examination of Department records for 40 of 1,358 hemp cultivation licenses issued by the Department during the period January 2021 through December 2022 found that the Department's policy was to not retain the results of criminal history checks for applicants issued licenses and, instead, the DLE kept the results for 180 days from the date the results were generated.
- As noted in the **Background** section, the Department is responsible for authorizing and overseeing industrial hemp pilot projects at selected State universities and colleges.¹² We examined Department records for 15 of 95 industrial hemp pilot projects approved by the Department during the period March 2019 through September 2021 and found that the Department was unable to provide evidence of:
 - Written permission of the landowner for 2 of 8 applicable pilot projects in accordance with Department rules.¹³
 - Onsite evaluations of the environmental containment plans for all 15 pilot projects in accordance with Department rules.¹⁴
 - Inspections of the transport containment apparatus for all 15 pilot projects in accordance with Department rules.¹⁵

In response to our audit inquiry, Department management indicated that many onsite inspections, visits, tours, and presentations of pilot projects were routinely conducted at the project sites by Department personnel; however, unlike the State Hemp Program, the industrial hemp pilot project did not have a database to track or document Department efforts.

Absent the retention of oversight, licensing, and pilot project application records in accordance with State law and the State records retention schedule, the Department's ability to demonstrate that hemp cultivation licensees are inspected, hemp cultivation licenses are issued, and industrial hemp pilot projects are authorized and operating in accordance with State law and Department rules is diminished.

Recommendation: We recommend that Department management enhance controls to ensure that adequate records of licensing and oversight activities for the State Hemp Program and

¹¹ Section 581.217(11)(d), Florida Statutes.

¹² Section 1004.4473, Florida Statutes.

¹³ Department Rule 5B-57.013(2)(a)11., Florida Administrative Code.

¹⁴ Department Rule 5B-57.013(3), Florida Administrative Code.

¹⁵ Department Rule 5B-57.013(5), Florida Administrative Code.

industrial hemp pilot projects are maintained in accordance with State law and the records retention schedule.

Finding 4: Service Organization Controls

The Department contracts with a vendor (service organization)¹⁶ to provide information technology (IT) services used to support the Department's online hemp cultivation license application process, including server and database management and application code control. As the Department relies on an online hemp cultivation license application to execute its licensing responsibilities, it is incumbent upon the Department to take steps to reasonably ensure that the service organization controls relevant to the IT services provided are suitably designed and operating effectively. Such steps may include requiring the service organization to provide a service auditor's report¹⁷ on the effectiveness of the controls established by the organization or, alternatively, Department monitoring of the effectiveness of relevant service organization controls.

As part of our audit, we inquired of Department management and examined Department purchase order records and found that, during the period March 2020 through December 2022, the purchase order with the service organization did not include a provision requiring the service organization to provide the Department a service auditor's report on the effectiveness of the service organization's controls and the Department had not requested or received service auditor reports nor monitored the effectiveness of relevant controls.

Periodic assessments of relevant service organization controls would provide Department management assurance that the service organization's internal controls relevant to the online hemp cultivation license application are suitably designed and operating effectively.

Recommendation: We recommend that Department management make or obtain independent and periodic assessments of the effectiveness of the service organization's relevant internal controls.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from February 2023 through May 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit

¹⁶ Service organizations provide services to user entities, some of which may be relevant to the user entities' internal control over financial reporting.

¹⁷ A service auditor's report, as described by the American Institute of Certified Public Accountants, AT-C Section 320, *Reporting on an Examination of Controls at a Service Organization Relevant to User Entities' Internal Over Financial Reporting*, provides information and auditor conclusions related to a service organization's controls. Service organizations make service auditor reports available to user organizations to provide assurances related to the effectiveness of the service organization's relevant internal controls. AT-C Section 320.04 states that the guidance provided in AT-C Section 320 may be helpful in reporting on controls at a service organization other than those that are likely to be relevant to user entities' internal control over financial reporting.

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.

This operational audit of the Department of Agriculture and Consumer Services (Department) focused on the implementation and administration of the State Hemp Program. For those areas, the objectives of the audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed into operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in internal controls significant to our audit objectives; instances of noncompliance with applicable governing laws, rules, or contracts; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, Department policies and procedures, and other guidelines, and interviewed Department personnel to obtain an understanding of Department responsibilities related to the implementation and administration of the State Hemp Program.
- Inquired of Department management regarding whether the Department made any expenditures or entered into any contracts under the authority granted by a state of emergency declared or renewed during the period July 2021 through December 2022 that either expired or exceeded 1 year. For the applicable state of emergency identified, we examined Department records for 12 expenditure transactions, totaling \$4,795,742, selected from the population of 1,396 applicable expenditure transactions, totaling \$5,496,512, to determine whether the expenditures appeared reasonable and necessary given the nature of the declared emergency and the statutory responsibilities of the Department.
- Obtained an understanding of selected Department information technology (IT) controls, assessed the risks related to those controls, and evaluated whether the Department had taken steps to reasonably ensure that service organization controls for the online hemp cultivation license application and the online hemp cultivation inspection recordkeeping system were suitably designed and operating effectively.
- Examined Department and United States Department of Agriculture (USDA) records to determine whether the Department had sought USDA approval of the State's Hemp Plan and initiated State Hemp Program rulemaking within statutory time frames.
- From the population of 1,358 hemp cultivation licenses issued during the period January 2021 through December 2022, examined Department records for 40 selected licenses to determine whether the licenses were issued in accordance with Sections 120.60 and 581.217(5), Florida Statutes, and Department Rule 5B-57.014(4) and (5), Florida Administrative Code, and whether the licensed cultivation areas were entered into the Department's registry.
- From the population of 679 hemp cultivation license applications denied during the period January 2021 through December 2022 or pending at the end of the 2021 or 2022 calendar year, examined Department records for 44 selected license applications to determine whether the applications were appropriately denied, applicants were timely informed of apparent errors or omissions, and proper notice was given to the applicants in accordance with Sections 120.60 and 581.217(5), Florida Statutes.
- Examined Department records for the 33 applicants that were denied a hemp cultivation license (either through an initial or renewal application) during the 2022 calendar year and that had a criminal history check status of "Results Not Received" to determine whether the applications had been declined in accordance with State law and Department rules.
- From the population of 848 harvest approvals during the period July 2021 through December 2022, examined Department records for 40 selected harvest approvals to determine whether the harvests were approved in accordance with Department Rule 5B-57.014(9), Florida Administrative Code.
- From the population of 64 harvest denials during the period July 2021 through December 2022, examined Department records for 30 selected harvest denials to determine whether the harvests were denied in accordance Department Rule 5B-57.014(9), Florida Administrative Code.
- From the population of 18 monthly reports submitted by the Department to the USDA during the period July 2021 through December 2022 regarding the locations where hemp was being cultivated or had been cultivated in the past 3 years, examined Department records for 6 selected reports to determine whether the Department had submitted the reports to the USDA in accordance with Section 581.217(9), Florida Statutes.
- Examined Department records for five of the designated laboratories responsible for testing 98 percent of the harvests with anticipated harvest dates during the period July 2021 through

December 2022 to determine whether the Department had adequately designed and implemented controls to ensure that designated laboratories met the qualifications established in Department Rule 5B-57.014(2)(d), Florida Administrative Code.

- From the population of 744 hemp cultivation licenses issued during the 2021 calendar year, examined Department records for 40 selected licenses to determine whether the licensees were subject to a random inspection in accordance with Section 581.217(11)(d), Florida Statutes, and Department Rule 5B-57.014(10), Florida Administrative Code.
- From the population of 95 industrial hemp pilot projects in effect at 108 locations during the period July 2019 through December 2022, examined Department records for 15 selected pilot projects to determine whether the Department had approved and monitored the projects in accordance with Section 1004.4473, Florida Statutes, and Department Rule 5B-57.013, Florida Administrative Code.
- Observed, documented, and evaluated the effectiveness of selected Department processes and procedures for:
 - Cash and revenue management.
 - The administration of tangible personal property in accordance with applicable guidelines. As of December 31, 2022, the Department was responsible for tangible personal property with related acquisition costs totaling \$485,412,345.
 - The administration of Department contracts. As of December 31, 2022, the Department was responsible for 3,122 active contracts totaling \$236,162,536.
 - The administration of the requirements of the Florida Single Audit Act. During the 2021-22 fiscal year, the Department expended \$37,991,920 for 12 State Financial Assistance programs.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report, and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE

OFFICE OF INSPECTOR GENERAL
(850) 245-1360



BUILDING C, SUITE 3C
2601 SOUTH BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32399

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES COMMISSIONER WILTON SIMPSON

September 13, 2023

Ms. Sherrill F. Norman, CPA
Auditor General, State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

Thank you for the opportunity to respond to the preliminary and tentative audit findings and recommendations for the Auditor General's operational audit of the Department of Agriculture and Consumer Services' (Department) State Hemp Program. I took office in January, 2023. Since then, my office has been diligently reviewing all divisions and offices to improve our processes and services. As you will see in my responses, we accept your recommendations and had already begun updating our rules to address shortcomings. A complete response to the four findings are below:

Finding 1: License Denials

The Department sometimes denied hemp cultivation licenses without valid cause.

Recommendation: We recommend that Department management enhance hemp cultivation licensing processes to ensure that both initial and renewal license applications are appropriately evaluated against the applicable requirements.

Response: We concur. The Division of Plant Industry's permitting team reviews all applications submitted against applicable requirements before license issuance or renewal. The Department is working through the rule-making process to clarify the hemp cultivation license requirements. We will ensure that hemp cultivation denials are documented with a valid cause.

Finding 2: Error and Omission Letters

The Department did not always timely notify hemp cultivation license applicants of apparent errors and omissions or retain records of such communications.

Recommendation: We recommend that Department management enhance controls to ensure that hemp cultivation license applications are timely examined, applicants are notified of apparent errors and omissions in accordance with State law, and records of such communications are retained in Department records.

Response: We concur. The Division of Plant Industry documents communication and attempts to communicate with applicants in the notes section of the online application. The Department will ensure that sufficient error and omission documentation is maintained.

Finding 3: Records Retention

The Department did not always retain documentation evidencing the basis for Department hemp cultivation licensing decisions, the proper inspection of licensees, or the appropriate approval and oversight of industrial hemp pilot projects.

Recommendation: We recommend that Department management enhance controls to ensure that adequate records of licensing and oversight activities for the State Hemp Program and industrial hemp pilot projects are maintained in accordance with State law and the records retention schedule.

Response: We concur. The Division of Plant Industry will enhance controls to ensure that adequate records are maintained of licensing and oversight activities. The Department is working through the rule-making process to incorporate the hemp pilot projects into the State Hemp Program.

Finding 4: Service Organization Controls

The Department contracted with a service organization to provide information technology (IT) services for the online hemp cultivation license application. However, the Department did not take steps to reasonably ensure that service organization controls relevant to the IT services performed on behalf of the Department were suitably designed and operating effectively.

Recommendation: We recommend that Department management make or obtain independent and periodic assessments of the effectiveness of the service organization's relevant internal controls.

Response: We concur. The Division of Plant Industry routinely communicates with the vendor and reviews the information contained in the application. The Department will require independent and periodic assessments of the effectiveness of the service organization's relevant internal controls.

I appreciate your staff's efforts in helping improve our State Hemp Program controls.

Sincerely,



Wilton Simpson
Commissioner of Agriculture