STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

DEPARTMENT OF ADMINISTRATION-
WEIGHTS AND MEASURES DIVISION

AUGUST 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-6

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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

September 11, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. Robert C. Dickeson, Director
Department of Administration

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Department of Administration - Weights and Measures Division. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Department of Administration - Weights and Measures Division is found on the yellow pages preceding the appendices.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton

Douglas R. Norton
Auditor General

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Enclosure

OFFICE OF THE AUDITOR GENERAL

A PERFORMANCE AUDIT OF THE DEPARTMENT OF ADMINISTRATION - WEIGHTS AND MEASURES DIVISION

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the State of Arizona, Department of Administration - Weights and Measures Division in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

Arizona's weights and measures program dates back to its 1912 statehood, when legislation provided for a state inspector of weights and measures. There were few substantive changes to this original legislation until 1974. In that year, Arizona adopted, with few modifications, a model law for weights and measures developed by the National Conference on Weights and Measures. This is essentially the same statute the weights and measures program functions under today.

The Department of Administration - Weights and Measures Division (DOA - Weights and Measures) administers the current program with a staff of 30. The Division's operations include:

> Licensing programs for: 1) registered services agencies, 2) registered servicemen, and 3) public weighmasters.
>
> Licensing and testing of commercial devices including gas pumps, liquid petroleum gas meters and grocery, cattle and industrial scales.
>
> Inspection and testing of prepackaged commodities for weight and label violations.
>
> The metrology laboratory, which tests, calibrates and certifies the accuracy of weights and measures.

Our review showed that as many as 23 percent of the weighing and measuring devices rejected as incorrect by the Weights and Measures Division are not repaired properly before being placed back into service by registered servicemen. To combat this, and to comply with statutory requirements, the Division needs to retest as close to 100 percent of the devices placed back in service as possible.

In conjunction with this, the Division needs to establish a program to monitor the performance of individual registered servicemen. The Division also needs to review and amend the testing program it uses to ensure that applicant servicemen are knowledgeable and competent before they are registered. (page 13)

We found that the cattle scale certification program provided by the Division is a service rather than a regulatory function. Further, this program uses eleven percent of the Division's inspection resources to benefit a limited number of ranchers, whereas they could be used to provide better protection to a wider segment of the public for such regulatory functions as gas pump and grocery scale tests, or retests of devices placed back in service by registered servicemen. (page 21)

Finally, the current statutory fee schedule for metrology laboratory services needs to be changed so that fees charged reflect the relative effort to perform the services. (page 27)

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the State of Arizona, Department of Administration - Weights and Measures Division in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

Standards of measurement date back to the Hammurabic Code.* Every society since has established standards for the accuracy of measurement.

In the United States the power to establish standards for measurement is granted to Congress by the Constitution. Congress has provided for the adoption of standards and has distributed to each state a complete set of the weights and measures adopted, "...to the end that a uniform standard of weights and measures may be established throughout the United States." Much of the enforcement of the use of the standards falls heavily on the states through their general police powers and powers to regulate intrastate commerce.

Arizona's weights and measures program dates back to its 1912 statehood, when legislation provided for a state inspector of weights and measures. There were few substantive changes to this original legislation until 1974. In that year, Arizona adopted, with few modifications, a model law for weights and measures developed by the National Conference on Weights and Measures. This is essentially the same statute the weights and measures program functions under today.

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* The earliest complete civil code known to history, named for its designer, Hammurabi, King of Babylon, circa 1800 BC.

The Department of Administration - Weights and Measures Division (DOA - Weights and Measures) administers the State's program with a staff of 30. The Division's operations include:

> Licensing programs for: 1) registered services agencies, 2) registered servicemen, and 3) public weighmasters.
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> Licensing and testing of commercial devices including gas pumps, liquid petroleum gas meters and grocery, cattle and industrial scales.
>
> Inspection and testing of prepackaged commodities for weight and label violations.
>
> The metrology laboratory, which tests, calibrates and certifies the accuracy of weights and measures.

The Weights and Measures Division is funded by legislative appropriations ($820,200 in fiscal year 1980-81) and generates approximately $290,000 annually in revenues to the State through license fees. Table 1 summarizes the full-time equivalent positions, revenues and expenditures of the Division for fiscal years 1976-77 through 1980-81.

The Auditor General expresses gratitude to the Assistant Director, DOA-Weights and Measures, and her staff for their cooperation, assistance and consideration during the course of the audit.

TABLE 1

SUMMARY OF FULL-TIME EQUIVALENT POSITIONS, REVENUES AND EXPENDITURES FROM FISCAL YEARS 1976-77 THROUGH FISCAL YEAR 1979-80 AND ESTIMATED FULL-TIME EQUIVALENT EMPLOYEES, REVENUES AND EXPENDITURES FOR FISCAL YEAR 1980-81

	1976-77*	1977-78*	1978-79*	1979-80*	1980-81* (estimated)
Full-time equivalent positions (FTE)	22	26	27	27	30
Revenues:					
Inspection and certification fees	$ 13,867	$ 16,670	$ 20,997	$ 24,900	$ 21,000
Commercial device license fees	255,747	257,098	254,306	250,100	253,500
Public weighmaster license fees	10,600	8,008	10,200	10,200	10,000
Registered services agencies	3,500	4,511	3,335	2,700	3,200
Miscellaneous	236	740	1,526	400	1,400
Total	$283,950	$287,027	$290,364	$288,300	$289,100
Expenditures:					
Personal services	$271,000	$316,528	$361,445	$394,300	$509,400
Employee-related expenditures	41,500	60,284	71,263	77,800	106,700
Professional and outside services	18,800	18,522	17,022	27,800	34,200
Travel in-State	62,200	63,104	73,823	82,700	92,500
Travel out-of-State	2,000	1,958	500	1,200	1,700
Other operating expenses	70,400	65,677	53,195	69,900	69,800
Equipment	3,700	9,293	8,930	50,000	5,900
Total	$469,600	$535,366	$586,178	$696,700	$820,200

* Source: Appropriations reports

SUNSET FACTORS

SUNSET FACTOR: OBJECTIVE AND PURPOSE IN ESTABLISHING THE DIVISION

A statement of legislative intent in establishing a weights and measures program at the time of statehood cannot be found. However, when the State adopted the model weights and measures legislation in 1974, legislative intent was stated as:

> "...to establish within the department of administration the state weights and measures division and to establish statutory authority for the administration, regulation and enforcement of weights and measures requirements within the state. The objectives of state supervision of weights and measures under this chapter include the following:
>
> "1. Assuring that weights and measures in commercial services within the state are suitable for their intended use, properly installed, accurate and are so maintained by their owner or user.
> "2. Preventing unfair dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within the state.
> "3. Making available to all users of physical standards or weighing, measuring and counting equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the state weights and measures division.
> "4. Promoting uniformity, to the extent such conformance is practicable and desirable between weights and measures requirements of this state and those of other states and federal agencies.
> "5. Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to ensure equity among buyers and sellers."

SUNSET FACTOR: THE DEGREE TO WHICH THE DIVISION HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The Division responds promptly to specific complaints. Further, if a complaint or problem arises which is widespread in nature, the Division diverts resources to correct the problem. For example, in December 1980 it was determined that large quantities of butter had been shipped into the State which were shortweight. In some cases, the butter containers were shortweight by as much as three quarters of an ounce in an eight-ounce container. The shortweighted butter would have been widely sold to Arizona citizens through major retail chains, but Division resources were diverted from other activities to track down the shortweight product and prevent its sale in Arizona.

The Division does schedule and group work in a manner to minimize travel time and costs.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS OPERATED WITHIN THE PUBLIC INTEREST

Most Division programs and activities appear to be in the public interest. Activities such as ensuring that gas pumps, grocery scales and other commercial weighing and measuring devices are accurate, calibrating and certifying standards, licensing public weighmasters and registered servicemen are in the public interest.

Nevertheless, some aspects of Division operations do not appear to be in the best interest of the public as a whole. For example, the Division has: 1) failed to retest all devices that have been rejected as incorrect by the Division and returned to service by a registered serviceman (page 13), and 2) neglected to utilize resources to full advantage in that it has allocated resources from regulatory programs to a cattle scale certification program (page 21).

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE DIVISION ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

When the Division was created in its present form (1974), a team of consultants developed the rules and regulations. The rules were drawn primarily from the model rules and regulations of the National Conference on Weights and Measures. However, the rules as adopted were not consistent with Arizona statutes in at least two instances. In one, an inconsistency with a rule relating to the quality of petroleum products was later corrected by amending the Arizona statute. In the other instance, a rule relating to pull dates* was declared invalid by the courts.

New Division rules and regulations and/or modification to existing rules and regulations are and have been reviewed by the Arizona Attorney General to ensure consistency with legislative mandate.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

Division efforts to encourage public input into the rule-making process and its efforts to notify the public of the impact of such rules appear to be more extensive than those of most State agencies reviewed by the Auditor General. Many agencies simply file proposed rules with the Secretary of State and post notices of public hearings in their buildings. In addition to these actions, the Division takes the following steps:

* A pull date is one placed on perishable or semiperishable commodities specifying the last date the commodity may be offered for sale without a significant risk of spoilage, loss of value or loss of palatability.

1. It solicits input from concerned groups, including consumers, before the rules and regulations are drafted and a hearing is held. Input is solicited through direct mail to licensees, press releases, articles in trade journals and notices to consumer groups.

2. Information is mailed to affected licensees with their license renewal forms after a rule is adopted or revised.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

The Division receives a limited number of complaints. In 1980, for instance, 329 complaints were received. Most of these complaints related to a specific device or situation, such as a gas pump that may short consumers or a gas station that may have water in its gasoline. Such complaints are easily and rapidly resolved. In fact, Division policy is to respond to such compliants within three days whenever feasible.

Occasionally the Division investigates complaints of deliberate shortweighing or other alleged fraudulent actions. These cases may lead to legal prosecution, but they are difficult to prosecute because when a weights and measures violation is treated as a criminal matter, the Division must prove "pattern and practice" and the violation must be egregious before prosecuting attorneys will accept the case.

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER ENABLING LEGISLATION

The Attorney General and county attorneys have concurrent jurisdiction to prosecute actions under the enabling legislation.

SUNSET FACTOR: THE EXTENT TO WHICH THE DIVISION HAS ADDRESSED DEFICIENCIES IN THE ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

As noted previously, a model law was adopted in 1974. In 1979 the Division requested and was granted new legislation which:

1. Gave the Division authority to establish quality standards for petroleum products (A.R.S. §41-2083),

2. Granted the Attorney General concurrent jurisdiction to prosecute weights and measure violations (A.R.S. §41-2113.C), and

3. Provided for a late penalty fee for failure to file a license application (A.R.S. §41-2091.B).

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE DIVISION TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

One change which we recommend as a result of our review is explained in detail on page 27. This change would provide for metrology laboratory fees based on the time required to perform lab services rather than a flat rate based on weight or measure size.

Another change pertains to A.R.S. §41-2065.15. This section requires the assistant director of the Division to:

> "Issue weighing and measuring instructions and regulations, in addition to the certificate of approval, to be posted on all approved weighing and measuring devices for the information of consumers and the operators of such devices." (Emphasis added)

The assistant director has informed us that this is an unreasonable requirement with which the Division cannot comply. The assistant director notes that it is impossible to put enough detail in such an instruction to be useful without making it either too large to attach to the devices or in print too small to read. Accordingly, the assistant director believes the requirement should be removed from the statutes.

FINDING I

FAILURE OF THE WEIGHTS AND MEASURES DIVISION TO RETEST DEVICES ALLOWS INCORRECT DEVICES TO BE PLACED BACK IN SERVICE.

Arizona Revised Statutes (A.R.S.) §41-2094 provides for the licensure of registered service agencies and registered servicemen who can provide the Division with satisfactory evidence that they are "...qualified to install, service, repair or recondition commercial weighing, measuring, metering and counting devices." Such registered servicemen or agencies must: 1) complete application forms stating that they possess the necessary qualifications and appropriate test equipment and standards, 2) pass a written examination, and 3) pay an annual fee of $20 per agency and $4 per registered serviceman. Arizona presently has 107 registered service agencies and 300 registered servicemen.

A.R.S. §41-2065(14) requires the Weights and Measures Division to reject any commercial weighing or measuring device found to be incorrect.* These devices are given rejection tags and, when repaired, can be returned to service only by the Weights and Measures Division or a serviceman registered by the Division.**

Registered servicemen are placing devices back into service. The reason for this practice is that it: 1) allows the owner of a device to resume using it as soon as it is repaired, and (2) provides the Division with some assurance that the devices have been repaired properly.

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* An incorrect device is one which does not conform to applicable tolerances and other performance requirements and/or does not meet all applicable specification requirements (A.R.S. §§41,2051.3, 41-2064 and 41-2065.14).

** Two types of tags are issued for rejected devices. One is a red tag which stops further use of the device until it is repaired. The other is a yellow tag which allows the owner to continue to use the device with the stipulation that the device be repaired within 30 days. Yellow tags are issued primarily for violations of specifications that do not affect accuracy, such as a broken glass cover.

However, our review revealed that:

- The Division does not retest approximately 75 percent of the devices placed backed into service by registered servicemen, although it is required to do so by law.
- According to Division tests, as many as 23 percent of the devices returned to service by registered servicemen are not repaired properly. Further, many devices continue to be incorrect even after being re-repaired and placed back into service for a second time.
- The Division does not systematically monitor the performance of individual registered servicemen to determine which ones' performances are substandard. As a result, the Division cannot take appropriate disciplinary action.

The Division Does Not Retest All Devices Returned to Service

The Weights and Measures Division does not retest all devices placed back into service despite the fact that (a) the Division is statutorially required to do so, and (b) seven of the 15 other states with programs comparable* to Arizona's retest every device placed back into service by registered servicemen.

A.R.S. §41-2111.B.2 allows a registered serviceman to:

> "Place in service, until such time as an official examination can be made, a weighing, measuring, metering or counting device that has been officially rejected." (Emphasis added)

Reviewing this provision, Legislative Council issued an opinion that the Division is required to retest each device placed into service by registered servicemen. In an opinion dated February 23, 1981, Legislative Council held:

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* Only 15 states have a single jurisdiction program comparable to Arizona's. The other 34 states are not comparable in that they have local as well as state inspection programs with varying requirements and/or do not have registered service agency programs.

> "To carry out the legislative responsibility imposed on the division, it would appear that once a registered servicemen notified the division that a previously rejected device had been placed back in service, the division should retest that device to verify its accuracy."

We found the Division retested 13 percent of the devices returned to service in fiscal year 1978-79 and 23 percent of them in fiscal year 1979-80. Not only does this fall considerably short of the 100 percent retest required by statute, it is substantially lower than the percentage of devices retested by other states having registered servicemen programs.* Table 2 lists each of these states and its percentage of retests.

TABLE 2

PERCENTAGE OF RETESTS FOR STATES
HAVING REGISTERED SERVICEMEN PROGRAMS

State	Percentage of Devices Retested
Arkansas	100%
Iowa	100
New Mexico	100
North Carolina	100
South Dakota	100
Utah	100
Vermont	100
Nevada	98
Kansas	95
Idaho	80
South Carolina	75
Georgia	50
Wyoming	50
North Dakota	30
ARIZONA	23
Mississippi	**

* Thirty-three states have registered servicemen programs, but only 15 states have weights and measures programs comparable to Arizona's.

** Data not available.

In discussing the level of retesting with the assistant director of the Division we learned that the Division disagrees with the interpretation that the statutes require 100 percent retests. The assistant director told us she believes statutory intent was to allow the Division the discretion to establish retest levels based on available resources. She claimed that to recheck 100 percent of the devices placed back in service would require shifts of resources from other areas and that the Division's travel funds are insufficient for the task.

In spite of the above arguments, our audit showed there is a definite need to increase the number of retests by the Division. As pointed out below, a significant portion of devices placed back in service by registered servicemen are not repaired properly. Also, as detailed in Finding II, the Division may be able to use its existing resources more effectively if it deemphasized other programs and placed more emphasis on retests.

Inaccurate Devices Are
Returned to Service

As shown in Table 2, the Division does retest approximately one-quarter of the devices placed back in service by registered servicemen. A review of the Division's computer records for fiscal year 1978-79 and 1979-80 showed that 23 percent of devices placed back in service by registered servicemen still were incorrect when retested by the Division. The percentages of retagged devices by type of weighing device for fiscal year 1979-80 were as follows:

Grocery scales	14%
Industrial scales	29%
Gas pumps	26%

Because gas pumps affect so many consumers and had a high percentage of retags, we conducted further study of this area.

At the request of audit staff, the Division retested gas pumps which were placed back in service by registered servicemen during March 1981 in the Phoenix and Tucson areas. These retests showed that 29 percent of the tested devices had not been repaired properly. Those devices found to be improperly repaired were repaired a second time by registered servicemen and returned to service. However, a second retest by the Division revealed that 25 percent of the re-repaired gas pumps still were improperly repaired.

Following this study, the Division conducted further retests of gas pumps in the Phoenix area. Over a ten-week period the Division found 14.9 percent of the gas pumps retested remained defective. Table 3, summarizes the percentages of retags over the period of the two studies.

TABLE 3

PERCENTAGE SUMMARY OF RETAGS
BY STUDY AND TIME PERIOD

	Time Period	Percentage of Retags
Auditor General Study	3/11	23.5% (Phoenix only)
Division study	3/23 to 4/10	21.2
	4/13 to 5/1	15.5
	5/4 to 5/29	6.3
	(average)	14.9

As shown above, the percentages of retags declined over the time periods studied. This suggests that an aggressive retesting program does result in improved work quality by registered servicemen.

According to the Division it is difficult to determine exactly why so many of the devices placed back into service are still incorrect. Possible explanations include careless work, intentional disregard of necessary procedures by registered servicemen, environmental factors affecting the performance of a device (e.g., heat, dust), or the failure of the Division to ensure through its examination process that servicemen are qualified.

As part of our audit, we reviewed the procedures used by the Division to test the competency of registered servicemen. We found that the Division is not ensuring that servicemen are qualified through its examination procedure.* Our conclusion is based on the following:

1. The format of the examinations. The examinations consist of true-false questions and are administered as an open-book examination. Further, the pertinent handbook section, statute or regulation for each question is cited in the margin of each question.

2. The lack of controls over the examinations. The examinations are mailed to registered service agencies and are returned by mail. If an agency employs 12 servicemen, 12 examinations are sent to the agency. Further, only one version of the examination is used for each type of device for which a test is administered. As a result, it is possible for someone other than each employee being tested to determine the correct answers and copy them onto all 12 sheets before mailing.

We were told by Division staff that: 1) anyone who fails to achieve a passing score of 70 is allowed to retake the test until he passes, and 2) the staff could not recall anyone who did not pass the examination eventually.

In our opinion, the examination used by the Division for registered servicemen provides little, if any, assurance that an applicant is knowledgeable or competent.

* The written test was initiated by the present assistant director in December 1978. Prior to that time, no testing was done.

The Performance of Individual Registered Servicemen Is Not Systematically Monitored to Identify Substandard Performers

The Division does not systematically monitor the performance of individual registered servicemen. As a result, the Division is precluded from identifying and taking corrective action against incompetent servicemen.

As we have noted, the Division does not retest every device placed back in service by registered servicemen. Further, the Division does not aggregate and analyze the results of those retests that are done to allow for monitoring the performance of individual servicemen. For example, data is not extracted and kept regarding which servicemen put which devices back into service, or the results of retests on those devices. In addition, the Division does not keep data in an easily accessible manner to help determine which servicemen are or are not having their work retested, and with what results.

The assistant director has told us she agrees with the concept of monitoring the performance of individual servicemen or agencies. She said the Division plans to attempt this monitoring by using the data processing capabilities of a word processor the Division plans to install within six months.

CONCLUSION

The Weights and Measures Division is failing to comply with statutory requirements that devices returned to service by registered servicemen be retested by the Division. This failure to retest every device is critical because: (a) data indicates as many as 23 percent of the devices are incorrect after being placed back in service, and (b) the Division does not formally or systematically monitor the performance of registered servicemen to identify and rectify such instances of inadequate performance.

RECOMMENDATIONS

1. We recommend the Division retest as close to 100 percent of the devices returned to service as possible. Because so many devices placed back in service by registered servicemen are incorrect, we recommend the Division consider transferring resources from other programs to accomplish this.

2. We recommend the Division establish a monitoring program to identify and rectify instances of inadequate performance by registered servicemen.

3. We recommend the Division review and amend its testing program to help ensure that applicant servicemen are knowledgeable and competent before they are registered.

FINDING II

THE CATTLE SCALE CERTIFICATION PROGRAM IS A SERVICE RATHER THAN A REGULATORY FUNCTION AND, AS SUCH, DOES NOT REPRESENT AN EFFECTIVE USE OF THE DIVISION'S RESOURCES.

Arizona Revised Statutes (A.R.S.) §41-2065 require the Weights and Measures Division to "inspect and test" commercial weighing devices. Accordingly, the Weights and Measures Division currently tests and certifies cattle scales for Arizona ranches. Such certifications are conducted annually by the Divison for those ranchers who request them. Each year the Division sends ranchers a letter asking them to notify the Division what, if any, scales they want certified. Ranchers pay the Division a $20 fee for these certifications.

Reviewing the cattle scale certification program, we found that the program: 1) appears to be a service rather than a regulatory function, and 2) may not be the best utilization of the Division's resources. By allocating approximately eleven percent of its inspection resources to cattle scale certifications, Division resources are diverted from other, more critical, regulatory areas. Also, the Division exceeds its statutory authority by arbitrarily charging ranchers a lower fee for the cattle scales certifications than it does for licensing or certifying similiar scales.

A Service Rather Than A Regulatory Function

Most cattle scales inspected by the Division are commercial devices and as such fall under the Division's responsibility to "inspect and test." A survey of cattle scale owners by audit staff found that: 1) the scales are used to determine the selling weight of the owners' cattle, and 2) an average of 834 head of cattle were weighed for sale on each scale in 1979, representing more than $320,000 in sales per owner.

However, because of the manner in which the program is conducted, the cattle scale certification program appears to be a service rather than a regulatory function, one which primarily benefits a limited number of ranchers rather than the public as a whole. The program uses a significant percentage of limited Division inspection resources that could provide protection to a wider segment of the public if used in other areas.

The cattle scale certification appears to be a service rather than a regulatory function because the program is entirely voluntary. The Division inspects only the scales of those ranchers who request such inspections, and the scales are only tested at a predesignated time. This contrasts sharply with the regulatory testing programs for other weighing and measuring devices in that the owners of other devices do not: 1) determine if the devices will be tested, or 2) receive advance notice from the Division as to when the tests will be performed.

Resources May be Better
Used in Other Areas

In spite of the fact that the cattle scale program appears to be only a service, it represents a significant effort on the part of the Division in that it consumes the equivalent of approximately 2.5 inspection positions (or eleven percent of the Division's 23 inspectors) and 15 percent of the Division's in-State travel budget. If these resources were directed toward regulatory functions, the Division could enhance its effectiveness significantly. For example:

1. Gas pump compliance rates* and gas pump inspections. Currently, a higher percentage of gas pumps in Arizona may be inaccurate than in most other states. Data indicates, however, this percentage could be decreased through more inspections, and that would result in increased savings for consumers.

* Compliance rates are the percentages of devices found to comply with specified standards at the time of inspection.

A comparison was made of the compliance rates for gas pump inspections in Arizona and comparable states.* Results show that Arizona's compliance rate of 79 percent for gas pumps ranks last among states reporting data in this category. Table 4 shows the compliance rate for gas pumps by state.

TABLE 4

COMPLIANCE RATES FOR GAS PUMP INSPECTIONS BY STATE

State	Compliance Rate (Percentage)
North Carolina	94
South Dakota	94
Arkansas	92
Wyoming	92
Vermont	89
Iowa	86
Nevada	83
North Dakota	80
ARIZONA	79
Georgia	**
New Mexico	**
South Carolina	**
Idaho	***
Mississippi	***
Utah	***
Kansas	***
Average	88

* See footnote on page 15 regarding comparable states.
** Gas pump inspection procedures differ from Arizona's.
*** Data not available.

Statistical analysis of the data from the other states shows that the frequency of inspection does affect compliance rates. If an additional 2.5 inspectors were used to inspect gas pumps rather than cattle scales, an additional 7,962 gas pumps could be inspected each year. This would not only increase compliance rates for gas pumps, it also would provide considerable savings for consumers. Based on the Division's current level of performance in this area, we estimate the increased inspections would prevent an estimated $335,000* in potential overcharges to ultimate consumers each year.

2. Grocery store scales. If the equivalent of 2.5 inspectors used in the cattle program were devoted to grocery scale inspections, 640 more stores could be inspected each year. This would represent an increase of 42 percent in inspections and raise the total stores inspected each year from 58 percent to 82 percent.

3. Retests of devices returned to service. As previously noted in Finding I, the Division retests only about a fourth of the devices placed back in service by registered servicemen. As many as 23 percent of the gas pumps which are retested still are found to be inaccurate. If 2.5 inspectors were used to conduct retests, the Division could retest nearly every device** placed back in service. This would greatly aid the Division in enhancing its effectiveness in that the incidence of inaccurate devices being placed back in service could be reduced significantly.

Finally, it appears that the cattle scale inspections do not constitute the optimum use of Division resources. According to Division officials they: 1) have not received any complaints about cattle scales, and 2) consider both the buyers and sellers in cattle transactions to be experts at estimating the approximate weight of the animals being sold.

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* Based on the increased number of gas pumps that could be inspected and the frequency and average amount of overcharges currently identified through the Division's current level of inspections.

** One hundred percent retests may not be feasible if extensive travel is required to outlying areas to inspect one or two devices placed back in service.

If the Division were to use its resources for more critical regulatory functions (such as those described above), it would be consistent with the Division's practice in other areas. Because of limited resources the Division has chosen not to inspect and test such things as bulk gasoline meters, wholesale food packages (other than for State institutions and school districts), milk meters and propane vapor meters, even though such items also fall under the Division's statutory mandate to "inspect and test."

Arbitrarily Low Fees Are Charged for Certifications

In conducting the cattle scale certification program the Division charges ranchers a $20 fee. In doing so, the Division has exceeded its statutory authority in that it has set an arbitrarily low fee.

A.R.S. §41-2091 provides for the Division to charge fees for licensing and certifying weighing and measuring devices. A.R.S. §41-2092.A specifies the fees that may be charged by each class of weighing and measuring device; however, subsection D. of the same section does allow the Division director to "...reduce such fees to any amount he deems necessary."

Cattle scales generally are classified in the 7,500-59,999-pound capacity class of scale. The statutorily specified fee for this scale class is $50. This is the fee the Division has charged 396 other types of scales licensed in this class. However, citing the statutory authority to reduce fees, the Division charged only $20 for each of the 339 cattle scales certified in this same class.

The lower fee not only results in approximately $10,000 in lost revenue each year, it also represents an arbitrary act. According to a December 18, 1980, Legislative Council opinion, the assistant director of the Division does not have the authority to charge a lower fee for one subclass of scales unless the cost involved for the subclass is less. Legislative Council held:

> "If scales are used for commerial purposes, the assistant director may reduce the fee for a statutory class but may not subclassify scales to benefit one subclass unless the subclassification represents differences in actual cost or there is a valid state interest served by the subclassification." (Emphasis added)

Cattle scale certification inspections do not cost less than inspections of other scales in the same class. In fact, we estimate that the average cost to inspect a cattle scale is 257 percent of the average cost to inspect an industrial scale in the same weight class. The average cost of inspecting a cattle scale is $160.31, whereas the average cost of inspecting an industrial scale is $62.46.

CONCLUSION

The cattle scale certification program appears to be a service rather than a regulatory function. Division resources devoted to cattle scale inspection could be used more effectively if directed towards Division regulatory programs which have limited resources. In addition, the Division has exceeded its statutory authority by arbitrarily establishing a lower fee for cattle scale tests than that charged for industrial scales in the same weight class.

RECOMMENDATIONS

1. We recommend that the Division discontinue its cattle scale certification program and redirect those resources to retests of devices returned to service or other regulatory programs, such as gas pump tests or grocery scale tests.

2. In those instances in which the Division does inspect a cattle scale, we recommend the same fee be charged as for industrial scales in the same weight class.

FINDING III

THE STATUTORY FEE SCHEDULE FOR METROLOGY LABORATORY SERVICES NEEDS TO BE CHANGED SO THAT THE FEES CHARGED REFLECT THE EFFORT REQUIRED TO PERFORM THE SERVICE.

The metrology laboratory of the Weights and Measures Division tests and certifies weights and measures for Division inspectors and for the public. The Division's certified weights and measures can be used as standards for testing the accuracy of weighing and measuring devices or for other purposes for which accuracy is required. Metrology laboratory certifications are made without charge for State agencies and nonprofit organizations; however, other entities are charged a fee in accordance with A.R.S. §41-2067.H. Our review of the fees charged by the metrology laboratory revealed that they are inequitable in that they do not reflect the relative costs of making the certifications.

Inequitable Fee Structure

A.R.S. §41-2092 establishes fees* to be charged by the metrology laborabory for certifying weights and measures. For example, the laboratory charges $2 to certify weights up to and including five pounds and $3 to certify weights over five pounds and up to and including 50 pounds. However, because of the different factors involved in certifying weights and measures, these fees are inequitable because they do not reflect the relative costs to the laboratory to provide the services.

The costs incurred by the laboratory to do certifications are dependent largely on the time required to complete the work, and that time is dependent on such factors as:

* Fees have not been revised since 1974.

1. Graduations Required - The more graduations required in a certification the longer the certification will take to finish. Each graduation takes approximately the same time. Therefore, a 25-meter length standard calculated by centimeters will take ten times longer to calibrate than a 25-meter length standard calibrated by decimeters. However, the fee schedule in A.R.S. §41-2092 establishes a fee that is based on the length of the standard. Thus, the laboratory would charge the same fee for both certifications in the example, despite the fact that one takes ten times longer to complete.

2. Adjustment Required - The number of adjustments required also affects the time required to do a certification. The metrologist may need to add or remove material to certify a weight. Thus, two weights of the same size may require different times to certify because one may require many more adjustments. According to the metrologist, it is not unusual for a 50-pound weight to take longer to certify than a 500-pound weight because 50-pound weights receive rougher treatment and, therefore, require more adjustments. Ironically, the laboratory charges $3 to certify a 50-pound weight and $20 to certify a 500-pound weight.

3. Precision of Adjustment - The more precise the certification desired, the more time usually is required to complete the certification. Weights and measures may be calibrated to field standards, or to more accurate precision standards, depending on their intended uses. Thus, a two-gram weight calibrated to precision standards may require much more time to certify than a three-pound weight calibrated to field standards.

Surveying other states, we found that 28 charge fees for their metrology services. Of these 28 states, 22 or 79 percent charge fees based at least partly on the time required to make certifications. We also found that private companies performing precision calibrations generally set their fees on an hourly basis.

CONCLUSION

The statutory fees charged for metrology laboratory services should be changed to reflect the relative costs to certify weights and measures. The current fees allowed by A.R.S. §41-2092 result in inequitable certification fees.

RECOMMENDATION

We recommend that A.R.S. §41-2092 be amended to provide for the Division to charge fees based on the actual time required to perform certification services.

OTHER PERTINENT INFORMATION

In March 1974, the Weights and Measures Division purchased a large truck specially equipped to test meters used to measure bulk deliveries of fuel. The price of the truck in 1974 was $23,111. The Division discontinued using the truck two years later, because testing bulk meters was a low-priority activity. The truck has sat idle since December 1976 with less than 10,000 miles registered on its odometer. It has not been maintained and requires new tires and general servicing before it can be used again.

According to Division officials they have retained the truck because they hope to obtain additional staff to resume testing bulk metering devices. The Division requested such staff in its fiscal years 1977-78, 1978-79, 1980-81, 1981-82 budget requests, but has not been granted the additional staff requested. Division officials claim that they have not sold the truck because they anticipate that the bulk meter testing program eventually will be resumed.

DEPARTMENT OF ADMINISTRATION
WEIGHTS AND MEASURES DIVISION

STATE OF ARIZONA

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BRUCE BABBITT, GOVERNOR
ROBERT C. DICKESON, DIRECTOR
PAT M. FULLINWIDER
ASSISTANT DIRECTOR

August 28, 1981

Mr. Douglas R. Norton
Auditor General
State of Arizona
Phoenix, Arizona 85007

Dear Mr. Norton:

Submitted herewith are the revised written comments in response to the first of the several divisional portions of the performance audit of the Department of Administration, that of the Weights and Measures Division.

We appreciate the opportunity to comment in writing on the audit.

By way of providing perspective, we are pleased to note that, after considerable scrutiny by your staff, initiated 16 months ago, the Weights and Measures Division and its several programs succeeded in fulfilling your performance criteria.

Respectfully submitted,

Patricia M. Fullinwider

Robert C. Dickeson

RCD:eb

RESPONSE OF THE DIVISION OF WEIGHTS AND MEASURES TO THE PERFORMANCE AUDIT CONDUCTED BY THE OFFICE OF THE AUDITOR GENERAL AS PART OF THE SUNSET REVIEW

The Division wishes to thank the Auditor General's Staff for their efforts and their courtesy in their acceptance of suggested language as well as substantative changes during the Draft Review Process. Particularly considering the difficulties in understanding the technical aspects of Weights and Measures, the Auditor's staff have done a commendable job. They have made several suggestions; some are already implemented; some are under consideration; and some were under way at the time of the audit. The Division still has several areas of disagreement with the final report.

We in Weights and Measures have found over the years that the information contained in various reports and surveys can often be misleading depending on the presentation of the information. A cursory review of an annual report from a state east of Arizona would have led one to believe that a major effort was undertaken by that state in package control as they had listed 3.4 million packages checked for net weight compliance. A more careful reading of the report revealed that this was the total production of one commodity within that state and the weights and measures officials had sampled the packages at the point of origin. Reliance on unsubstantiated reports is hazardous at best. Varying interpretations of legislation, rules, and procedures can effect

uniformity. We would like to cite a case in point which was published in the National Conference on Weights and Measures Interim Report regarding the number of states which adhered to a specific method of checking packages. The report found that although the states claim to follow the procedure, when asked to resolve a problem based on that procedure, 44% of those states failed to take the appropriate action, thus demonstrating that although they claimed to follow the procedures of Handbook 67 (the procedure in question is contained in this handbook), in an actual problem situation, they did not follow the procedure. Thus, had no follow-up questions been asked, the conclusions drawn from the data regarding compliance would have been different.

The Division wishes to take issue with two of the three Findings of the Auditor General as delineated in their Sunset Audit. We will take the findings out of order and deal with the areas of general agreement first.

FINDING III

We do not dispute Finding III but merely wish to comment, in a general way, on the recommendation. While the Metrology lab fees are not based on length of time required for calibration, whether the cost charged to industry should be reflective of true costs to the Division, is one of philosophy. At present, none of the fees in the statutes reflect the philosophy delineated in Finding III. The fees charged vary and affect all commercial establishments which establish prices based on weight, measure or count. As we are all aware, the cost of regulation is passed on to the consumer and any increase in fees to industry will be reflected in increased charges to consumers. Certain devices which are not required to be calibrated are presently being calibrated, thus providing traceability and accuracy in the marketplace.

If these fees are increased these devices may no longer be calibrated. The Division feels that if fees for the laboratory are changed to reflect true cost, then, in the interest of consistency, the other fees charged should be examined to see if they need revision.

The Division does take issue with the remaining two findings and will deal with them in order.

FINDING I

The Division wishes to express its concern regarding this finding. The basis of the Auditor's finding is a legislative council opinion which is in direct opposition to the interpretation of the Division. Acceptance of this finding would result in far reaching changes for the Division which are not in the public interest. The council opinion indicates that the Division is required to retest 100% of all devices . This requirement will have a significant impact, not only on the resources of the division, but perhaps more importantly, on the concept of equity in the marketplace.

It is not merely a question of inadequate travel funds, as suggested, that would preclude us from retesting at 100% but inadequate staffing and inadequate equipment, as well. Even if all the necessary resources were available to us, the Division feels that this level of retest would be a misuse of resources. In the past, we have reallocated resources to retesting on a temporary basis whenever compliance rates fell below a set level. The Auditor commends us for this action in the area of package control but does not accept it as a viable alternative to 100% retesting. We feel that our approach allows us to initially test, as well as keep an eye on the performance

of Registered Service Agencies through retesting. The Division has always tried to be sensitive to the needs of the rural areas of the State and to provide them with the same degree of equity that the major metropolitan areas receive. It is less expensive to test in the metropolitan areas because of density. But if we retest at 100% in the metropolitan areas, we will be unable to test in the outlying areas, thus generating two levels of equity within the State. The problem of retest in the outlying areas is partially recognized by the Auditor when he states on page 24, "One hundred percent retest may not be feasible if extensive travel is required to outlying areas to inspect one or two devices placed back in service."

The Division has some technical concerns with the definition of "retest at 100%" as used by the Auditor.

Definition of "Retest at 100%":

"Retest" as used in the audit report could mean any of the following:

1. retest 100% of all red tags issued
2. retest 100% of all red and yellow tags issued
3. retest 100% of initial installations, red and yellow tags
4. retest 100% of initial installations, red and yellow tags and any maintenance work done by an RSA.

We can envision a minimum of two time frames for each of the four above:

1. retest within 30 days of receipt of placed in service report
2. retest any time after the 30 day period (up to 2 years).

The council's opinion does not state anywhere what kind of a time frame is intended by the legislation and the Division can find no reference in the

statutes to time frames, except for licensing, yet the implication of the council's opinion is that immediate retesting is required. Since no time frame is included in the statute, how can the council attempt to establish one? Existing legislation gives the Assistant Director the obligation to hire such staff as necessary but no one would agree that she can hire as many as she wants. If no time limit is established, and if it takes two years to conduct all retests, then the Assistant Director is not in violation of the statute. Given existing resources, there is no possibility of accomplishing the 30 day time frame for any of the four categories without serious disruption of the existing testing program. Given scheduling, timing, equipment and personnel allocations, in some instances it would be impossible to meet the 30 day deadline in given device categories. Resources would be greatly misallocated and inefficently used without some discretion in the area of retest timing. Devices which require the services of an RSA will be repaired at different times. Given the fact that we are all aware of the need to be as energy conscious as possible, the Division doubts if the Auditor means to recommend that the Division should check the RSA's work immediately upon notification as that would entail a great deal of inefficient traveling. In some instances, for example on vehicle scales, there is only one piece of Weights and Measures equipment to do the job. If the large truck is conducting tests, it is unavailable for retest work. The same is true in other areas where the Division has only one test unit in a given program area. Despite our concern to have inspectors cross-trained there are instances where a given staff member is essential to the testing capabilities in a given program area. If the person is unavailable, then the testing or retesting must wait. As is so often the

case, there must be some discretion allowed in the performance of a task in order to provide for the exceptions and unforseen contingencies. If the Division were locked into a 30 day time frame, we would fail to meet the deadline as often as we succeeded in meeting it. If the Auditor General means to recommend that we increase the level of retesting to a higher percentage than we are now doing, then that is a possibility. When the parameters are as stringent as they appear in the report, then our compliance is not physically possible.

The Division must strongly oppose the implementation of a 100% recheck program which has, as a major component, a specified time period, even if the definition of "recheck" is interpreted in its narrowest sense (i.e., retest 100% of all "red tags" issued). We also must strongly oppose implementation of a random retest program for the same reasons. Given the fact that devices are repaired by servicemen at different times in different locations, we will be spending a considerable amount of our time and travel resources "chasing," which is an inefficient use of our limited resources. The Division is willing to consider increasing the level of rechecks for tags affecting volume, especially in the major metropolitan areas (i.e., those areas with a close proximity to one of the three branch offices). The time frame must be flexible or we will be compelled to diminish the number of initial inspections which are accomplished. If we are to be held to a level of 100% rechecks of all "red and yellow tags," the number of initial inspections will decrease by as much as 50%. An implication in the Audit Report is that it is the sole responsibility of the RSA to insure device accuracy. In the statute, the owner is held accountable for the accuracy of the device. The RSA who undertakes to repair a device and submits a "placed in service" report to the Division is attesting to the fact that <u>when he left the device it met all specifications,</u>

tolerances, and all requirements of the Division. What if the RSA left the device accurate and the owner adjusted it after he left? What if after he left something happened to the device to affect its accuracy (e.g., someone ran over the hose)? What if the Weights and Measures official misreads one cubic inch on the miniscus? What if the device was marginal and with use slips out of tolerance? What if there is an interfaced system and something goes wrong with the other component? The Auditor General does not seem to give much credence to these possibilities but they are very real and are encountered every day in the marketplace.

We make every attempt to insure that the RSA is aware that when he leaves the pump or scale he is attesting to the accuracy of that device. To attempt to hold him to conditions outside his control is unrealistic and unenforceable. The implication in the Audit Report is that the Division does no monitoring of RSA work. That the Division does not have a formal procedure where the information is readily available to the Auditor is conceded. At some point, however, the needs of the Auditor and the needs of the Division are incompatible. If a phone call will resolve the problem, is it necessary to maintain a paper record? We are, and have been for some time, looking at a more documentable procedure but the fact is that RSAs are monitored. We have held office hearings, entered into stipulation agreements and signed consent decrees with RSAs. The Program Area Supervisor is responsible for monitoring the work of the RSAs in his area.

The Auditor states, in Finding II, that 11% of the Division's resources are misallocated in the cattle scale testing program. To retest, as suggested in the instant Finding, at the 100% level will require significantly more than

11% of our existing budget. To retest 100% of vehicle scales alone would cost the State approximately $137,000 in additional funding, and that is just one program area.

The Division still has reservations regarding the questionnaire used by the auditor.

Not wishing to cast aspersions on fellow State Weights and Measures Officials, it is well known in the weights and measures community that despite the cry for uniformity, the several states are a long way from that desired goal. We have only to look at the findings of the National Task Force on Package Control to see that uniformity does not exist. In one area, namely, method of test in package checking, despite claims by jurisdictions that uniformity does exist, the Task Force found a variety of procedures being used in the field. The Auditor has asked in his questionnaire if the jurisdictions adhere to Handbook 44 (which is the listing of specifications and tolerances regarding devices). Nowhere in the questionnaire are there any follow-up questions to determine if there are exemptions to some of the provisions. Arizona follows Handbook 44 except where it has been modified by regulation. For years we had different requirements for the allowable pit depth of scales than Handbook 44 but if the Division had been asked if we adhered to the Handbook, our answer would have been "yes." If one looks at the responses of the states shown on the Survey Summary sheet we find another instance of non-uniformity. In response to the question: "Does your state law require all devices to be inspected at least once a year or more often?", the states of Georgia, North Carolina, South Carolina and Utah responded "no." These states, however, all

have adopted the model weights and measures law and the model regulation on Registered Service Men, as has Arizona. These four states have interpreted the model as to not require 100% retest, as has Arizona.

We have no idea from the Survey Summary what time frame is used by the jurisdictions which do retests. Is it within 30 days? Is it as soon as possible? Is it within a year?

We feel that the State of Florida has the most extensive petroleum testing program of any state in the union. They test devices three times a year; they also have funds to support the testing program in that they impose a fee of one-eighth of a cent per gallon which generates approximately 4 million dollars annually. We are hard pressed to see how any other state can have a higher compliance level than Florida since no other state can compete with the level of resources available to it and no other state tests as often.

The Auditor General's report indicates a compliance level for Arizona of 79%. If we look at the data month by month by two categories, the picture is somewhat different, however.

1980	Compliance: All Tags	Compliance: Red Only
July	75%	92%
Aug	81%	94%
Sept	80%	95%
Oct	87%	95%
Nov	80%	93%
Dec	77%	90%
1981		
Jan	66%	88%
Feb	71%	88%
Mar	72%	90%
Apr	80%	92%
May	85%	91%
June	88%	93%
Annual Rate	79%	92%

We contend that the combination of the two types of tags is a more realistic picture of total compliance but, given the high figures in the Auditor's survey, our contention is that other states are not including all tags. Procedures differ from state to state. Some jurisdictions allow weights and measures officials to adjust meters, and thus for those meters adjusted, there are no tags issued. Arizona does not allow inspectors to adjust meters. The equipment is too varied and complex to make this a safe practice. Some states meet the registered service man at the station and the repairman makes the adjustments which are necessary and any meters thus adjusted are not issued tags, and thus they are never recorded in the compliance ratings. Analysis of the data ought to take into account these differences in procedure.

FINDING II

The Division seriously questions the Auditor's opinion that the testing of cattle scales is a service and not part of our regulatory function. The Auditor does not question that the scales are commercial devices and thus, unless the statute is changed, are within our jurisdiction. They cite the following reasons for determining that it is a "service:"

A. The items weighed belong to th e person who owns the scale.

B. The person who benefits is the owner of the device.

C. Notification is given as to time of test.

That the scale owner is weighing his own cattle is irrelevant. The grocer owns the product weighed on his scales, as the gas station owner owns the gas sold through his dispensers. Since all own the devices measuring the product, the Division fails to see this as a valid distinction.

As to item B, the Auditor is concluding that the commerce thus protected is

relatively insignificant. Using the Auditor's own figures for the amount of commerce which passes over these devices, however, we calculate a value of 107 million dollars. We fail to see that this is an insignificant amount of commerce deserving protection on an annual basis.

Finally, the very nature of the use of cattle scales requires us to give notification if we are to test. If a rancher is not going to use his scale for commercial purposes, there is no legal requirement to test. Testing all cattle scales, whether they are used or not, would require a great deal more than the 11% of our budget which we are currently using. Frequently, ranchers will lock the beam box (this contains the weighing element). If we did not notify the rancher of our intent to test, we would not have access to the device. Notification of ranchers is in the same category as testing retail grocery stores during normal business hours, it provides us with accessability. In the area of LPG testing, we notify prior to testing. If we did not do so, we would varely find propane trucks available for testing.

The Auditor claims that 2.5 FTEs are used in the cattle scale testing program. Our figures show 2.1 FTEs for a period of six months a year. This is due to refined data collection for the current year and was unavailable at the time of the audit. The point is made to indicate what resources would be available to the Division if cattle scale testing is abandoned.

If we abandon the cattle scale testing, we will still have other devices of similiar capacity to test, thus not saving the amount that the Auditors anticipate. The Auditor appears to feel that there will be minimal difficulty in transferring the resources from cattle scale testing to some other program. Since a primary concern of the Auditor appears to be retesting, especially of

gas pumps, we wonder how useful a boom truck with 5000# of known weight will be in the checking of gas dispensers.

Legislative Council has given its opinion as to the fee being arbitrary. We disagree. There are other instances where a subclass has been charged a lesser fee (e.g., LPG meters) and the rationale has been based on the usage of the device. Cattle scales are not in continuous commercial use, but are used occasionally in commerce and the Division feels justified in charging a lesser fee on this basis.