STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

OFFICE OF THE DAIRY COMMISSIONER

APRIL 1983

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 83-8

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

April 28, 1983

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Roy C. Collier, Dairy Commissioner

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Office of the Dairy Commissioner. This report is in response to a January 18, 1982, 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 Dairy Commissioner is found on the yellow pages.

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

Respectfully submitted,

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OFFICE OF THE AUDITOR GENERAL

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Office of the Dairy Commissioner in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Office of the Dairy Commissioner (ODC) regulates the production and sale of dairy products in Arizona. ODC is responsible for protecting the public from milk-borne diseases and ensuring the quality of dairy products. Although the Office of the Dairy Commissioner was established by law in 1918, responsibility for regulating the dairy industry was shared by several State and local agencies until 1974. Since 1974, ODC has been responsible for enforcing Arizona's dairy laws and regulations.

Management of Laboratory Services Needs Strengthening

(see page 11)

The Office of the Dairy Commissioner may have paid higher prices than necessary for laboratory services by not using competitive bidding to the extent possible. In addition, ODC does not adequately manage its laboratory services contract with the Department of Health Services (DHS). ODC lacks accurate and reliable work load data for this essential and costly function; consequently, ODC bases budgetary decisions on inaccurate information and does not verify the accuracy of DHS charges for laboratory services.

ODC should encourage competition among private laboratories to bid for sampling services by clarifying specifications and dividing the contract into two or more proposals. ODC should also require DHS to provide additional documentation of services rendered and maintain its own records in a way which allows it to verify the accuracy of DHS charges.

Eliminating Soft Serve Regulation Will Save ODC $51,000 (see page 21)

Transferring responsibility for sanitary regulation of retail soft serve ice cream to county health departments would save the ODC up to $51,000 annually without reducing protection of public health. Currently, a retail food establishment with a soft serve machine receives both a general inspection by the county health department and an inspection of the soft serve machine by ODC. However, these two inspections are sufficiently similar to make consolidation feasible. Since county health departments now inspect the food establishments in which the soft serve machines are located, inspecting soft serve machines should not increase their personnel costs. The Legislature should amend A.R.S. §3-607 to eliminate ODC responsibility for licensing and inspecting soft serve machines. Authority to license soft serve machines should be transferred to the counties.

Stronger Control of Adulterated Milk Is Needed (see page 27)

ODC should strengthen control over the disposition of adulterated milk. The existing program is adequate for identifying milk containing pesticide residue or aflatoxin but does not provide an independent verification of proper disposal. Physical verification by ODC personnel would ensure protection of public health and would be consistent with the considerable effort made to identify adulterated milk. ODC should establish 1) regulations governing the transportation and disposal of adulterated milk and 2) procedures which provide for physical verification of the disposal of adulterated milk in at least some cases.

License Fees May Be Too Low
(see page 31)

ODC regulatory activities benefit both the general public and the dairy industry. Thus, both the public and the industry should pay a portion of the program's costs. The public pays through General Fund appropriations; the industry pays through license fees. However, dairy license fees have remained unchanged for over 30 years while ODC responsibilities and costs have increased substantially. As a result, the portion of the ODC program supported by license fees declined from 31 percent in 1952-53 to only 5 percent in 1981-82. This indicates that the industry may not be bearing an adequate portion of regulatory costs. The Legislature should determine the proportion of program costs which should be recovered through license fees and revise the fee schedule accordingly.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Office of the Dairy Commissioner in response to a January 18, 1982, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Office of the Dairy Commissioner (ODC) regulates the production and sale of dairy products in Arizona. ODC is responsible for protecting the public from the health effects of milk-borne diseases and ensuring the quality of dairy products produced and sold in Arizona.

History of Dairy Regulation in Arizona

Although the Office of the Dairy Commissioner was established by law in 1918, responsibility for regulating the dairy industry was shared by several State and local agencies until 1974. Since 1974, ODC has been responsible for enforcing Arizona's dairy laws and regulations.

Prior to 1957, the dairy industry was characterized by a lack of uniform sanitation standards. In 1931, the Legislature recognized the validity of the Federal milk grading standards but left the choice of adopting the standards to each municipality. Some cities adopted the Federal standards but others did not. Finally, in 1957, Arizona formally adopted the U.S. Public Health Service Standard Milk Ordinance, later renamed the Grade A Pasteurized Milk Ordinance (PMO). All milk producers, manufacturers and distributors in the State were to abide by these sanitation standards.

Despite the adoption of Federal standards, enforcement was not uniform because regulatory authority was shared by a number of State and local agencies. The Dairy Commissioner had authority to issue licenses and permits and to inspect milk producers (dairies), manufacturers and distributors.

However, the Commissioner appointed county health officers as his deputies and functioned largely in an advisory role. The State Health Department was also involved in the regulation of the dairy industry because of its responsibility to control diseases which might be transmitted through milk and milk products. The State Health Department delegated part of its responsibilities to county health officers.

The division of regulatory power among these several agencies was not clear and limited the effectiveness of the overall regulatory effort. As evidence of this, in the two-year period 1972-73, 70 percent of the dairies and milk plants inspected by Federal officials failed to meet PMO standards. As a result, the Food and Drug Administration (FDA) threatened to make Arizona milk shippers ineligible for interstate shipments. The apparent need for greater centralization of regulatory authority led to statutory changes in 1973 which made the ODC responsible for enforcing Arizona's dairy laws and regulations. The Pasteurized Milk Ordinance provides the standards for most of these statutes and regulations.

Programs and Activities

Currently, the Commissioner operates six programs which serve two purposes. One purpose is to protect public health from potentially harmful milk and dairy products. The second purpose is to ensure the marketability of dairy products through quality control. The six programs are:

1. Licensing and permitting - The Commissioner issues licenses and permits to milk producers, processors, producer-distributors, wholesale distributors, samplers and testers. To ensure continued compliance with requirements, sanitarians inspect dairy farms and manufacturing plants on a regular basis. The Commissioner's staff also licenses and inspects soft ice cream dispensing machines.

2. Pesticide/aflatoxin surveillance - Dairy Commissioner staff test samples from milk tankers to ensure that milk is free of carcinogenic agents such as aflatoxin and pesticides.

3. Sampling of raw milk and milk products ("Universal sampling") - ODC systematically tests raw milk from each producer (dairy) for antibiotic and bacteria levels. The testing has two purposes: public health and product quality. Controlling antibiotics protects public health while testing for bacteria both protects public health and controls the quality of milk used for Grade A products. Milk products, such as Grade A homogenized milk, are tested for coliform and antibiotics.

4. Labeling and complaint resolution - The Commissioner inspects packaged milk and trade products to ensure that required information appears on labels. The Office also investigates consumer complaints related to milk and milk products.

5. Grading - The U.S. Department of Agriculture (USDA) certifies the Commissioner and staff to grade butter, cheese and milk powder for compliance with USDA standards. The USDA reimburses the State for this service, the purpose of which is to control the market quality of these products.

6. Emergency preparedness - The Commissioner cooperates with the Arizona Office of Emergency Services and the Arizona Radiation Regulatory Agency to prepare and implement an emergency response plan for possible radiation in milk.

Personnel and Budget

For fiscal year 1982-83 the Commissioner has a staff of ten FTEs. These include five sanitarians, one inspector, two clerical staff, a deputy commissioner and the Commissioner. All appropriations for the Office are made from the General Fund. Table 1 shows actual or budgeted expenditures for fiscal years 1980-81 through 1983-84.

TABLE 1

ACTUAL OR BUDGETED EXPENDITURES
FISCAL YEARS 1980-81 THROUGH 1983-84

General Fund	1980-81 Actual	1981-82 Actual	1982-83 Approved	1983-84 Requested
FTE positions	10.0	10.0	10.0	10.0
Personal services	$154,900	$186,700	$206,700	$211,700
Employee-related expenses	32,600	40,600	46,600	46,600
Professional and outside services	200,400	203,600	191,800	174,400
Travel:				
In-State	32,500	35,500	20,500	22,000
Out-of-State	600	2,900	900	900
Other operating expenses	15,300	16,500	11,500	21,600
Equipment	600	-0-	5,000	-0-
Total	$436,900	$485,800	$483,000	$477,200

Audit Scope and Purpose

The purpose of our audit work was to evaluate:

1. The need for dairy regulation;

2. The effectiveness of regulatory activities, including compliance with Federal requirements for Grade A milk and State requirements for pesticide/aflatoxin surveillance; and

3. The efficiency of agency operations.

The Auditor General and staff express appreciation to the Dairy Commissioner and his employees for their cooperation and assistance during the course of the audit.

SUNSET FACTORS

In accordance with A.R.S. §§41-2351 through 41-2379, the Legislature is to consider 11 factors to determine, in part, whether to continue or terminate the Office of the Dairy Commissioner (ODC).

1. Objective and purpose in establishing the agency

Although Arizona dairy statutes contain no explicit statement of legislative intent, A.R.S. §3-605 established public health as the purpose for dairy regulation. Specifically, subsection C states that

> "Powers and duties in the federal milk ordinance relating to health and sanitation are vested in the state dairy commissioner. In addition, the commissioner shall provide reasonable regulations necessary to assure that all milk and milk products sold or distributed for human consumption are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The regulation shall prescribe reasonably necessary measurements governing the production, processing, labeling, storing, handling and transportation of milk and milk products...."

ODC policies and guidelines reaffirm public health as the agency's primary objective. The agency also assists the industry by establishing a product quality standardization program which enables Arizona dairy products to qualify for interstate shipment.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which the agency has operated

ODC has established a regulatory program based on Federal standards which is generally effective in protecting public health and meeting the needs of the dairy industry. However, the agency can improve its effectiveness by strengthening its regulatory procedures for aflatoxin/pesticide surveillance.

ODC can improve the aflatoxin/pesticide surveillance program by requiring producers and processors to notify the agency and obtain permission prior to disposing of adulterated milk. ODC should revise its procedures for follow-up on adulterated milk to include physical verification of the disposition in at least some instances (see page 27).

ODC can improve its efficiency by better managing laboratory services. Encouraging competitive bidding by private laboratories for the laboratory services, wherever feasible, can possibly lower costs for these services. Also, the agency currently lacks the information needed to control the level or cost of laboratory analyses (see page 11).

ODC can further improve efficiency by discontinuing the soft serve ice cream program. County health departments can meet the need for sanitary regulation of soft serve ice cream machines--without adding staff--as part of their ongoing food establishment sanitation program (see page 21).

3. <u>The extent to which the agency has operated within the public interest</u>

The Office of the Dairy Commissioner operates in the public interest by enforcing the Pasteurized Milk Ordinance and other State statutes and regulations which ensure a safe supply of milk and dairy products throughout the State.

ODC's activities also benefit the dairy industry by helping Arizona milk shippers meet the Federal requirements for shipping milk out-of-state. When more than 50 percent of the milk producers/manufacturers in a state fail Federal inspections during a two-year period, the Food and Drug Administration (FDA) puts the state on notice that its milk shippers will be removed from the Interstate Milk Shippers (IMS) list unless sufficient corrective actions are taken. Removal from the IMS list prevents milk produced in that state from being sold in other states. In 1972 and 1973, 70 percent of Arizona's

milk producers/manufacturers failed Federal inspections; consequently, FDA threatened to remove Arizona shippers from the IMS list. In 1973, the Legislature made the ODC responsible for enforcing all dairy-related statutes. Since then, the sanitary conditions of the Arizona dairy industry have improved substantially as measured by Federal inspections, and Arizona shippers have remained on the IMS list. The most recent Federal evaluation showed Arizona's dairy industry to be well within Federal standards.

4. The extent to which rules and regulations promulgated by the agency are consistent with the legislative mandate

During our audit, we found no apparent inconsistencies between ODC's regulations and its statutes or objectives. However, Finding III recommends changes in the regulations to allow for more effective control over the disposal of milk adulterated with aflatoxin or pesticides (see page 27).

5. The extent to which the agency 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

The most recent revision to the rules and regulations was made in 1979. ODC complied with requirements for publicly posting the proposed revision, holding public hearings and sending special notifications to industry representatives and other interested parties. During the course of our audit, ODC submitted proposed statutory revisions to representatives of the dairy industry for their input.

In addition, ODC informs the public as to its actions by issuing a press release regarding any adverse sample results and any action taken against specific products.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction

ODC policy is to investigate all complaints as rapidly as possible. Our review of ODC complaint files shows that in most instances the agency initiates action promptly upon receiving complaints. ODC received 31 complaints during the last quarter of 1982 and began investigating 23 within one day or less. In 25 of the 31 cases ODC obtained satisfactory resolution within two weeks of the initial complaint.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

Violations of ODC's enabling statutes can be prosecuted as criminal offenses by the Attorney General or the County Attorney. In addition, ODC can seek a court injunction against violations of A.R.S. §§3-661 through 3-670 when more immediate enforcement action is needed. However, ODC does not have the same authority to seek injunctions against violations of A.R.S. §§3-601 through 3-634. To ensure uniform enforcement of dairy laws, the Legislature may wish to amend A.R.S. §3-634 to allow the ODC to seek an injunction for all violations.

8. The extent to which the agency has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

ODC has sought only one statutory revision in recent years. The 1982 amendments to the statutes struck the year "1978" in references made to the Grade A Pasteurized Milk Ordinance (PMO). This allows ODC to enforce the Federal standards regardless of the date of revisions made to the PMO.

More recently, ODC prepared statutory revisions with the original intent of proposing these changes during the 1983 session. The Attorney General, Legislative Council and representatives of the industry reviewed the proposed revisions, which included adoption of Federal standards for manufactured milk products.* Upon reconsideration, however, the ODC plans to make the changes by regulation rather than legislation.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in the subsection

Based on our audit work, we recommend the Legislature consider making three changes in the enabling statutes for the Office of the Dairy Commissioner:

a. Delete requirements in State law for licensing and inspecting soft serve ice cream machines (see page 21),

b. Increase license fees to recover a greater portion of regulatory costs (see page 31), and

c. Authorize the ODC to seek a court injunction against violations of A.R.S. §§3-601 through 3-634.

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare

Terminating the Office of the Dairy Commissioner and the sanitation programs which it carries out would expose the public to the risk of milk-borne disease now largely under control. Moreover, termination of ODC and its programs would mean that Arizona no longer meets the requirements of the PMO. Consequently, Arizona dairy producers would no longer be able to ship milk out-of-state as part of the Interstate Milk Shippers Agreement.

* Manufactured milk products are products made from milk or cream not conforming to the requirements of the PMO.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate

ODC regulation meets the requirements of the Federal PMO and thus provides reasonable assurance that dairy products are safe and wholesome. Two regulatory areas, however, need improvement.

First, ODC needs to establish more effective control over the disposal of milk contaminated with aflatoxin or pesticide. The agency should promulgate rules and regulations requiring the industry to notify ODC and obtain permission prior to disposing of adulterated milk. ODC should verify proper disposal by physically observing the disposal in at least some instances (see page 27).

Second, the soft serve ice cream regulatory program should be transferred to the counties. County health departments could adequately regulate soft serve ice cream as part of their routine food establishment sanitation programs (see page 21).

FINDING I

THE OFFICE OF THE DAIRY COMMISSIONER DOES NOT ADEQUATELY MANAGE ITS CONTRACT FOR LABORATORY ANALYSIS OF DAIRY SAMPLES.

The Office of the Dairy Commissioner (ODC) does not adequately manage its contract with the Department of Health Services (DHS) for laboratory analysis of dairy samples. Laboratory analysis is essential for ODC to regulate the dairy industry and represents a major portion of the Office's budget. However, ODC may have paid higher unit prices than necessary for sample analysis and lacks the information needed to control the level and cost of its laboratory services program.

Laboratory Analysis Is Essential To the Regulatory Program

ODC relies extensively on laboratory analysis in its oversight of the dairy industry. ODC annually processes between 9,000 and 10,000 samples testing dairy products for milk-borne diseases, aflatoxin, pesticides, bacteria count and antibiotics. Approximately 5,000 of these samples are required by the Federal Grade A Pasteurized Milk Ordinance (PMO) to qualify Arizona milk producers for interstate shipments. Another 1,500 to 2,000 samples are part of ODC's aflatoxin/pesticide surveillance program to ensure that producers do not market adulterated milk. About 2,500 to 3,000 samples test the quality of soft serve ice cream. Thus, laboratory analysis is essential to ODC's dual responsibility of protecting the public health and ensuring the marketability and quality of dairy products.

The laboratory analysis program is also a major portion of ODC's budget. As Table 2 shows, ODC expends at least one-third of its budget to test approximately 10,000 samples annually.

TABLE 2

PROPORTION OF LABORATORY COSTS TO TOTAL BUDGET
FOR FISCAL YEARS 1980-81 THROUGH 1983-84

	Fiscal Year			
	1980-81 (Actual)	1981-82 (Actual)	1982-83 (Estimate)	1983-84 (Estimate)
Number of Samples	9,648	9,052	9,320	10,620
Cost of Lab Services	$194,400	$199,300	$153,000	$174,400
Total ODC Budget	$436,900	$485,800	$483,000	$475,500
Percent of Lab Costs to Total Budget	44%	41%	32%	37%

Because laboratory analysis is important to dairy regulation and represents a large portion of the ODC budget, management control is necessary to ensure efficiency. Despite the importance of laboratory analysis, the Dairy Commissioner has not considered managerial oversight and accountability to be his agency's responsibility since DHS provides the services.

ODC May Have Paid Higher Unit Prices than Necessary for Laboratory Services

ODC may have paid higher unit prices than necessary for laboratory services in recent years. Prior to 1982-83, at least one private laboratory could have provided some analytical services to ODC at substantially lower costs than DHS charged. Although the bidding process appears to have led to reduced unit prices for some services, further savings may be possible through greater use of competitive bidding.

ODC has always used the DHS laboratory for all sample analyses. The DHS laboratory is presently the only laboratory in Arizona certified by the Federal government to perform the analyses required by the Pasteurized Milk Ordinance (PMO). However, private laboratories can become certified for PMO analyses. Further, State-mandated sampling programs, such as aflatoxin/pesticide and soft serve ice cream, do not require laboratory certification. Therefore, use of the DHS laboratory can be justified only if quality and price are competitive with private laboratories.

Private Laboratory Prices Lower - ODC could have purchased laboratory services for pesticide analyses at a lower cost per sample than that charged by DHS. We compared DHS unit prices for pesticide analyses with those of a private laboratory. Our results show that prior to fiscal year 1982-83 the private laboratory cost per sample for pesticide analyses was about $12 lower than the DHS price. DHS charged $52 per sample while the private laboratory quoted a price between $35 and $40 per sample for a monthly volume of 75 to 100 samples. Thus, private laboratory charges would have been 20 percent lower than DHS charges.*

Impact of Competitive Bidding - The cost of DHS laboratory services decreased in 1982 when ODC sought competitive bids. An Attorney General opinion issued in 1982 indicated that ODC should purchase laboratory services by open competitive bids. ODC solicited bids for its 1983-84 laboratory services in July 1982. DHS was the only bidder at $174,400. The bid reflected a reduction from $71 to $46 per sample for aflatoxin analyses and a reduction from $52 to $34 per sample for pesticide analyses. More significantly, however, DHS also reduced by the same amounts its costs for aflatoxin and pesticide analyses under the 1982-83 contract.

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* ODC compared DHS charges with the same private laboratory in 1980. However, results of the ODC comparison were misleading. According to ODC, the private laboratory quoted a price of $70 per sample. Our comparison revealed that the $70 per sample cost was for a single sample. ODC actually submits between 75 to 100 samples each month for pesticide analysis. As the number of samples increases, the cost per sample decreases. Thus, the private laboratory cost was actually between $35 to $40 per sample, rather than $70.

The substantial reduction in laboratory costs suggests that previous years' contracts were overpriced. Budget analysts and industry sources had questioned DHS prices for aflatoxin and pesticide analyses as being too high. Without competitive bidding, however, neither ODC nor DHS had any incentive to keep costs to a minimum. ODC and DHS explain the cost reduction by noting that new equipment was purchased in previous years and the laboratory streamlined testing procedures. However, the cost decreases for fiscal years 1982-83 and 1983-84 occurred concurrently with the open competitive bidding process.

Need to Increase Competition - Although laboratory costs decreased with competitive bidding, ODC can increase competition for the laboratory services contract by clarifying its requirements and dividing the contract. Misunderstandings about ODC requirements may have discouraged some private laboratories from submitting bids in 1982. Dividing the contract would offer the opportunity to bid to a larger number of laboratories. Clarifying the bid specifications would provide interested laboratories with better information on which to base their proposals.

Private laboratories were interested when ODC issued an invitation to bid on the laboratory services contract for fiscal year 1983-84 but may have been discouraged by misunderstandings about agency requirements. Of the four laboratories which obtained bid specifications, only DHS submitted a formal proposal. Representatives of one laboratory told us that one reason it did not bid was their understanding that ODC would normally require analyses on weekends, a requirement the laboratory could not meet at a competitive price. Although ODC specified a need for "24 hour laboratory facilities in case of emergency," the need is not routine. Thus, one potential bidder did not submit a bid at least in part because it misunderstood ODC requirements.

A second potential bidder did not submit a formal proposal because it lacked sufficient time. ODC originally gave bidders four weeks to submit proposals and later extended the deadline by an additional two weeks. However, since these services had not been put out to bid prior to 1982, this second potential bidder did not consider six weeks adequate to prepare a proposal. This laboratory, however, plans to submit a proposal for the next fiscal year.

Thus, ODC's initial experience with competitive bidding indicates that private laboratories are interested in bidding for the laboratory services contract. To improve future competition, ODC should clarify its specifications to preclude any misunderstandings about what will be required of the successful bidder.

Dividing the contract by the three types of analyses involved--PMO, aflatoxin/pesticide and soft serve analyses--would further encourage competition. Previously, ODC issued a single set of specifications covering all required analyses. Because PMO analyses require a federally certified laboratory, this single set of specifications restricted bidding by forcing potential bidders to obtain the PMO certification to successfully compete.* ODC can promote competition by dividing its program into two or three contracts, one for PMO analyses and one or two for aflatoxin/pesticide and soft serve ice cream analyses. Private laboratories are qualified to perform the latter two analyses without PMO certification. For fiscal year 1983-84, the cost of lab sevices for these samples is $81,000 and $20,000, respectively. The PMO portion is $73,000. Dividing the contract in this manner would increase competition and may result in even lower unit prices.

ODC Lacks Management Control Over Laboratory Services

ODC lacks adequate control over the level and cost of its laboratory services program. Inaccurate management data hinders the budgeting process and prevents ODC from effectively monitoring DHS charges for laboratory services.

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* Although most private laboratories are eligible for certification, prior to 1982 ODC did not bid out dairy analyses, and therefore private laboratories had no reason to become certified. However, private laboratories are likely to apply for certification now that the opportunity exists to obtain a contract with ODC.

Management Data Inaccurate - ODC does not know the actual amount of laboratory services received. In fact, four separate accounts provide four different figures regarding the amount of service received.

A comparison of ODC budget submissions for fiscal years 1982-83 and 1983-84 revealed that each reports different figures for the number of dairy samples processed by the DHS laboratory (Table 3). In its 1982-83 budget request, ODC reported 4,740 milk samples analyzed in each of the two preceding fiscal years. One year later, the ODC budget request showed 1,800 and 1,900 samples analyzed during the same periods. The two budget submissions also showed a reduction from 3,938 to 2,000 in the number of soft serve samples analyzed in fiscal year 1981-82.

Because of these substantial discrepancies in ODC budget documents we requested that ODC verify the numbers of samples analyzed in fiscal years 1980-81 and 1981-82. ODC tallied sample reports submitted by DHS for those years. The results differed not only from the budget requests but also differed from a separate count provided by DHS (see Table 3).

TABLE 3

COMPARISON OF THE NUMBER OF SAMPLES PROCESSED DURING FISCAL YEARS 1980-81 AND 1981-82 AS REPORTED BY FOUR DOCUMENTS

Activity	Document	1980-81	1981-82
Milk samples	Office of the Dairy Commissioner	2,234	2,366
Milk samples	Department of Health Services	2,805	2,753
Milk samples	ODC - Budget - 1982-83	4,740	4,740
Milk samples	ODC - Budget - 1983-84	1,800	1,900
Differences between the highest and lowest counts		2,940	2,840
Soft ice cream	Office of the Dairy Commissioner	3,008	2,451
Soft ice cream	Department of Health Services	2,359	2,551
Soft ice cream	ODC - Budget - 1982-83	3,938	3,938
Soft ice cream	ODC - Budget - 1983-84	3,938	2,000
Differences between the highest and lowest counts		1,579	1,938

Thus, four separate documents provide four different figures on the amounts of laboratory work for milk and soft ice cream samples. These samples represent a major portion of ODC's laboratory program. Inaccurate data for these activities misrepresents the scope of the ODC laboratory services program and, as described below, can result in errors in estimating future needs. Despite the importance of accurate management information, ODC has not developed a system to provide accurate, reliable information about its laboratory services program.

Inaccurate Estimates of Service Needs - Because its management data is inaccurate, ODC cannot make accurate decisions on its laboratory service needs. For example, in 1982 ODC proposed a program reduction which was in fact a program increase. In preparing its 1983-84 budget, ODC estimated that it would need laboratory analysis of 3,000 soft serve ice cream samples, a reduction from the 3,938 samples reported for 1981-82, the base year. However, the actual number of samples analyzed in 1981-82 was approximately 2,500. As a result, the proposed level of 3,000 samples for 1983-84 actually represented an increase of approximately 500 rather than a reduction of over 900 samples.

Lack of Control Over Payments to DHS - Inaccurate management data also prevents ODC from effectively monitoring DHS charges for laboratory services. ODC does not maintain adequate independent records to verify the accuracy of DHS charges. Moreover, ODC does not require DHS to submit a statement of services rendered as part of the payment process.

ODC has failed to use its own records to verify the number of samples processed and the accuracy of DHS charges. ODC receives a lab report for each sample submitted to DHS. However, ODC does not compare the number of lab reports received for a given period with a record of samples submitted to DHS during that period. Furthermore, ODC does not total the lab reports quarterly and compare the value of these services with DHS charges. Without these internal procedures, ODC cannot provide a reliable

count of samples processed nor verify the accuracy of DHS charges. In fact, when we asked ODC staff to count its laboratory reports for a two-year period, its counts differed from the number of samples reported by DHS for the same periods (see Table 3). In those cases where DHS reported a higher number than ODC, ODC would not know whether it was charged for more services than it actually received.

ODC also does not require DHS to provide adequate documentation as part of the payment process. ODC pays DHS at the beginning of each quarter for services the laboratory will provide during the quarter. Each payment represents one-fourth of ODC's annual budget for lab services. At the end of each fiscal year, DHS then refunds unused portions of the year's payments to ODC. ODC does not request DHS to provide a statement of the number and types of samples processed during the quarter or for the year as a whole.

ODC Has Not Assumed Responsibility for Laboratory Services

ODC has not adequately managed its laboratory services program because the agency did not assume full responsibility for the program. According to the Dairy Commissioner, he did not consider managerial oversight to be his responsibility since DHS provided the services. However, since 1974 ODC has been responsible for enforcing all dairy-related statutes. Sample analysis is an important tool in the ODC enforcement program, and laboratory service measurements and funding are included in the ODC budget. Like any agency, then, ODC is responsible for monitoring its laboratory service contract and presenting accurate information in official documents used for budgetary decisions.

The Dairy Commissioner stated that ODC will assume greater control over the laboratory services program when the 1983-84 contract with DHS goes into effect. The new contract specifies payment on the basis of individual samples analyzed. To receive payment, DHS will have to submit invoices showing the number of analyses performed. According to the Dairy Commissioner this procedure will improve ODC control over the program.

CONCLUSION

The Office of the Dairy Commissioner does not adequately manage its laboratory services contract with DHS. ODC has not used competitive bidding to the extent possible for obtaining laboratory services at the lowest cost. In addition, ODC lacks accurate and reliable work load data for this essential and costly function and does not adequately monitor DHS charges for laboratory services.

RECOMMENDATIONS

1. ODC should encourage competition among private laboratories to bid for sampling services by
   a. Clarifying the specifications for the laboratory contract and
   b. Dividing the contract into two or more proposals for separate bidding.

2. ODC should increase its control over the level and cost of laboratory services by
   a. Requiring DHS to provide periodic statistical and expenditure reports for laboratory services rendered. ODC inspectors should record the types and number of samples submitted for laboratory analysis so that ODC can periodically verify DHS reports; and

   b. Paying DHS only for actual laboratory work performed and submitted on a voucher with a request for payment.

FINDING II

THE OFFICE OF THE DAIRY COMMISSIONER CAN SAVE APPROXIMATELY $51,000 ANNUALLY BY ELIMINATING ITS SOFT SERVE ICE CREAM REGULATORY PROGRAM.

County health departments can provide adequate sanitary regulation of soft serve ice cream products, eliminating the need for the Office of the Dairy Commissioner (ODC) to regulate these products at the retail level. Although the health threat associated with soft serve ice cream appears to be relatively minor, some regulation is appropriate. Currently, sanitarians from both the ODC and county health departments inspect food establishments which sell soft serve products. According to our analysis, county health departments could adequately regulate soft serve at the retail level. Transferring ODC soft serve inspection responsibilities to the counties would save the State up to $51,000 annually.

Need for Regulation Is Limited

The threat of bacteriological contamination creates a need for sanitary regulation of soft serve ice cream. However, the associated health problems do not appear to be major.

The processing needed to dispense soft serve ice cream at retail establishments creates a need for some sanitary regulation. Soft serve ice cream is prepared for sale from a packaged soft serve mix. Like any dairy product, soft serve mix is a good medium for bacterial growth; and the contact surfaces within the processing machine, if not properly cleaned, provide opportunities for introducing bacteria.

Health problems associated with soft serve ice cream appear to be minimal, however. If bacterial growth causes a problem, it will generally result in mild nausea and is not likely to be reported to health authorities. As a result, health officials are not aware of any disease outbreaks resulting from soft serve ice cream. ODC sampling data further indicate that the health effects of soft serve ice cream are minor. For fiscal years 1976-77 through 1979-80 more than a third of the samples analyzed exceeded bacterial standards. During the same period, however, there is little evidence of illness resulting from soft serve ice cream and consumers made few complaints.

Sanitary regulation of soft serve ice cream is similar to microbiological surveillance of any potentially hazardous retail foods. Food sanitation is largely the responsibility of county health departments in Arizona, which conduct routine inspections of food service establishments. Given the nature of the health problems associated with soft serve ice cream, county health departments are capable of adequately protecting public health. Although all ten western states surveyed regulate soft serve machines, local health departments inspect the machines in six of these states.

ODC Could Save $51,000 Annually if County Health Departments Inspected Soft Serve Machines

Combining soft serve inspections with county health department inspections of food establishments would reduce ODC expenditures by approximately $51,000. ODC and health department inspections are sufficiently similar to make consolidation feasible. Inspecting soft serve machines is not likely to increase county health department personnel costs since health department sanitarians routinely inspect all food establishments, including those with soft serve machines.

ODC regulates soft serve machines through licensing, inspections and sampling. A.R.S. §3-607 requires owners to obtain a license for each machine and sets the annual fee at $10. There were approximately 960 licensed machines in Arizona during fiscal year 1981-82. ODC sanitarians visit each establishment once or twice a year to inspect the processing machines and take soft serve ice cream samples for laboratory analysis. During fiscal year 1981-82, ODC personnel made 1,458 inspections and took approximately 2,500 samples.

County health department sanitarians also visit the same establishments as part of each department's food sanitation program. Health departments make about two routine inspections per year with follow-up inspections as needed. County sanitarians do not closely inspect soft serve machines. They may examine a machine's exterior, but health officials in both Maricopa and Pima Counties noted that their personnel do not check internal cleanliness, since this is the responsibility of ODC sanitarians. However, one official said that his department could fully examine soft serve machines as part of its routine inspections without adding personnel.

Combining soft serve inspections with routine food establishment inspections would save ODC approximately $51,000 annually (Table 4). The transfer would eliminate the need for one sanitarian and one clerical position at the ODC. These positions cost approximately $38,000 in salaries and employee-related expenses during fiscal year 1981-82. Transferring soft serve inspections to the counties would also save ODC $22,600 in laboratory costs. County health departments may have to increase their laboratory costs somewhat, depending on the number of soft ice cream samples analyzed. However, county health officials disagree about the amount of sampling needed if they take over soft serve inspections. One county health department would sample only when it received complaints; another stated that regular sampling is the only way to ensure that soft serve products are wholesome.

TABLE 4

ODC SOFT SERVE PROGRAM COSTS
FISCAL YEAR 1981-82

Sampling costs	$22,653*
Employee costs	37,875**
Total program costs	60,528
Less license fees received	(9,630)
Net program costs	$50,898

* Based on 2,551 samples analyzed by DHS at a cost of $8.88 per sample.
** According to ODC, transferring the soft serve program to the counties would allow ODC to eliminate two positions. This figure represents salaries and employee-related expenditures for these two positions.

Should county health departments decide that laboratory analysis is needed, counties could recover part or all of the costs associated with sampling through license fees. ODC currently charges a $10 fee as provided by A.R.S. §3-607. If counties begin inspecting soft serve machines, authority to levy this fee should be transferred to the counties to defray any additional program costs.

Transfer of retail-level inspections to the counties would not remove all ODC responsibility for soft serve products. ODC would continue to inspect and sample soft serve mix at processing plants as part of its surveillance of milk products. However, this proposal would consolidate responsibility for regulating retail soft serve products with other food sanitation activities conducted by county health departments.

CONCLUSION

Transferring responsibility for sanitary regulation of retail soft serve ice cream to county health departments would save ODC up to $51,000 annually without reducing protection of public health. Since county health departments now inspect food establishments, it is likely that they can inspect soft serve machines without increasing personnel costs. Costs for sample analysis of soft serve products may require county health departments to license soft serve machines and charge fees to cover laboratory costs.

RECOMMENDATIONS

1. The Legislature should amend A.R.S. §3-607 to eliminate ODC's responsibility for licensing and inspecting soft serve machines. Authority to license soft serve machines should be transferred to the counties.

2. Upon implementation of Recommendation 1, county health departments should inspect soft serve machines as part of their routine food establishment sanitary inspections. Health departments should review the need for laboratory analysis of soft serve products and establish license fees, if needed, to defray analysis costs.

FINDING III

THE OFFICE OF THE DAIRY COMMISSIONER SHOULD STRENGTHEN CONTROL OVER THE DISPOSITION OF ADULTERATED MILK.

The Office of the Dairy Commissioner (ODC) should strengthen control over the disposition of adulterated milk. Although Arizona has an extensive program for identifying milk containing pesticide residue or aflatoxin, ODC does not independently verify that such milk is properly disposed. Physical verification by ODC personnel would assure protection of public health and would be consistent with the considerable effort made to identify adulterated milk.

ODC is concerned with two major adulterants in milk: aflatoxin and pesticides. Aflatoxin is a naturally occurring carcinogen found in cottonseed meal which is fed to dairy cattle in Arizona. Residues of pesticides are also suspected carcinogens which enter milk through cattle feed. In 1978 Arizona experienced a high incidence of aflatoxin adulteration. ODC now conducts an extensive surveillance program for aflatoxin and pesticides. ODC policy requires the analysis of 20 tanker samples for each contaminant during three of every four weeks, or approximately 1,500 total samples per year. ODC sampling procedures are designed to ensure that each producer is represented in a tanker sample every six weeks.

Sampling Level Is Adequate

The overall level of sampling for pesticide and aflatoxin from December 1981 through mid-December 1982 appeared to be adequate. ODC met its requirement for pesticide analyses for the period but was below its required frequency for aflatoxin analyses by approximately 2.8 tests per week on the average. Despite the shortfall, however, the current level of the aflatoxin/pesticide surveillance program seems appropriate. The low incidence of aflatoxin in milk samples during 1982 suggests that not fully

sampling for aflatoxin posed no serious health risks.* The higher incidence of pesticide samples exceeding standards indicates that ODC has appropriately focused its resources on a more significant threat to public health.

ODC Does Not Verify Disposal

Although ODC makes an extensive effort to identify adulterated milk, the agency fails to verify that such milk is not used for human consumption. ODC has no policy of observing the disposal of milk contaminated with aflatoxin or pesticide. Moreover, ODC did not consistently obtain documentation on the disposal of adulterated milk in 1982 despite a policy requiring such documentation.

ODC has no policy for observing the disposal of adulterated milk. When a producer is over tolerance for pesticide or aflatoxin, ODC prohibits the producer from selling the milk for human consumption and notifies the United Dairymen of Arizona (UDA) co-operative (most producers belong to this co-op). UDA picks up the adulterated milk in a special tanker apart from its regular pickups and stores the milk in a separate silo for processing into animal feed. If UDA lacks plant time for feed processing, it dumps the milk. Independent producers lacking access to processing facilities must dump their milk. ODC personnel, however, do not observe the disposal to verify that the milk is processed or dumped as required.

* ODC uses two standards for evaluating analysis results: tolerance level and screening level. The tolerance level is the point at which pesticide or aflatoxin concentration renders milk unfit for human consumption. The screening level is less than the tolerance level and indicates that one producer contributing to a tanker may have above tolerance concentrations in its milk. If a tanker load of milk exceeds the screening level, ODC will sample each producer represented by the tanker to identify above-tolerance milk. During the period we reviewed, less than 1 percent of the samples exceeded the aflatoxin screening level; none exceeded the tolerance level. Also, 9 percent of the samples exceeded the pesticide screening level and 2 percent were over tolerance.

Proper disposal of adulterated milk is necessary to ensure that milk products marketed for human consumption are free from potentially harmful substances. Instead of physically verifying disposal, ODC relies on shipping manifests provided by UDA to track the movement and disposition of adulterated milk. The Commissioner feels that this approach, combined with milk product sampling and processed feed inspection adequately protects the public. However, these procedures do not offer the certainty of proper disposal that can be achieved through physical observation. Moreover, physical observation is not currently possible since UDA notifies ODC after disposing of the milk.

Despite its policy of tracking shipments of adulterated milk through shipping manifests, ODC did not obtain full documentation on the disposal of adulterated milk in late 1982. ODC lacked complete documentation for eight producers placed on hold for adulterated milk during November or December 1982. Thus, ODC not only lacks procedures to physically verify the disposal of adulterated milk, but the Office also does not consistently follow existing procedures.

Physical Verification Is Used in Other States

ODC failure to physically verify disposal of adulterated milk differs from other western states with comparable or larger dairy industries. Four of the six states surveyed* do not permit haulers to sell adulterated milk for any purpose; producers must dump the milk. The two other states allow processing for feed at the discretion of their regulatory agencies. All but one of these six states occasionally verify that the milk is dumped. Unlike Arizona, officials in four of the states indicated that they have not encountered pesticide problems in recent years. However, those states maintain stronger control once adulterated milk is identified.

* These states are California, Colorado, Idaho, Oregon, Utah and Washington. Dairy production in these states is approximately equal to or larger than Arizona's production.

Within Arizona, the Department of Health Services (DHS) exercises similar control over adulterated foods under its jurisdiction. A.R.S. §36-910 empowers the DHS director to prohibit the sale or removal of adulterated foods without departmental permission. DHS verifies the disposal of such foods by requiring an inspector to sign either a release or a certification of destruction. Thus, DHS has the legal authority and procedures to control disposal of adulterated foods.

CONCLUSION

Arizona has an extensive program to identify adulterated milk. However, ODC needs to strengthen its control over the disposal of adulterated milk. The agency does not obtain documentation for all shipments and does not physically verify the actual disposal of adulterated milk.

RECOMMENDATIONS

1. The Dairy Commissioner should establish regulations governing the transportation and disposal of adulterated milk. The regulations should require: 1) UDA to provide ODC with documentation for all movement of adulterated milk, and 2) UDA and producers to inform ODC and obtain approval prior to disposing of adulterated milk.

2. ODC should revise its procedures for follow-up on adulterated milk to include physical verification of the disposal of adulterated milk in at least some cases.

FINDING IV

DAIRY LICENSE FEES, WHICH HAVE NOT BEEN REVISED IN 32 YEARS, MAY NEED TO BE INCREASED.

Most dairy license fees have not changed since 1951 despite a substantial increase in responsibilities and expenditures of the Office of the Dairy Commissioner (ODC). As a result, the dairy industry may not be bearing an adequate portion of regulatory costs.

Industry's Share of Program Costs Has Declined

Most dairy license* fees have not increased for 32 years. In fiscal year 1952-53 license fees recovered 31 percent of the Office's costs; today they represent only 5 percent of total regulatory costs.

When the license fee schedule was established in 1951, ODC had limited responsibilities for dairy regulation. County health officials carried out most of the inspection and sampling activities, while the Dairy Commissioner functioned largely in an advisory role. In 1973, the Legislature made ODC responsible for enforcing all dairy-related statutes.**

The revenue from dairy license fees has not kept pace with this growth in responsibility, however. In fiscal year 1952-53 receipts equaled 31 percent of ODC's expenditures. By 1981-82, license revenue had declined to 5 percent of ODC expenditures. Table 5 shows license revenues as a percentage of expenditures for the two fiscal years.

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* The term "license" includes all permits and licenses issued by the Office of the Dairy Commissioner.

** Effective in 1974

TABLE 5

DAIRY LICENSE REVENUES AS A PERCENTAGE OF ODC EXPENDITURES
FISCAL YEARS 1952-53 AND 1981-82

		License Revenues	
Year	Expenditures	Amount	Percentage of Expenditures
1952-53	$17,240	$5,408	31%
1981-82	$485,698	$22,530	5%

One reason for the decline from 31 to 5 percent may be that the ODC is not dependent on license fees for program support. Each year the ODC budget is funded by an appropriation from the General Fund. Unlike "90-10" agencies, the ODC is not expected to recover all program costs--or even a certain percent--through fees paid by the regulated industry. Therefore, there is little incentive for the Dairy Commissioner to recommend increases in license fees as program costs increase.

The Dairy Industry Should Pay a Portion of Regulatory Costs

ODC regulatory activities benefit both the general public and the dairy industry. The public benefits from activities which ensure that milk is not a health threat. The industry benefits in two ways. First, ODC oversight enables Arizona dairy producers to qualify for interstate shipment. Secondly, ODC has made dairy products more marketable by establishing a product quality standardization program.* Thus, both the public and the industry benefit from the program and should pay a portion of the program's costs in proportion to the benefits received. The public pays through General Fund appropriations; the industry pays through fees.**

* For example, one purpose of ODC "universal sampling" (see page 3) is to determine if the milk can be sold as Grade A based on bacteria count, which can affect freshness and taste.

** Market standardizaton programs in other agencies are funded entirely by fees. Examples include the Egg Inspection Board and the Fruit and Vegetable Standardization program of the Commission of Agriculture and Horticulture.

Establishing the portion of costs which each group should pay is difficult because the distinction between public benefits and industry benefits is unclear. For example, ODC sampling of raw milk and finished products ("universal sampling") helps protect public health but also enables market standardization of these products by allowing them to be classified as Grade A, ungraded for processing, etc. Although we cannot determine what percentage of regulatory costs should be recovered through license fees, the fact that fees have not been increased in 32 years and at one time represented 31 percent of expenditures strongly suggests that the present fees may no longer be adequate.

Other western states charge a wide range of dairy license fees. Table 6 compares Arizona fees to those levied by other western states. The data indicate that in all categories but one Arizona's fees are lower than the average fees for those states which have similar license categories.

TABLE 6

COMPARISON OF ARIZONA DAIRY LICENSE FEES
WITH FEES IN TEN WESTERN STATES

		Other Western States*			
License	Arizona**	Average Fee	High	Low	Number of States with Fees for Similar Licenses
Milk producer	$-0-	$139.69	$420	$ 33.75	4
Milk distributing plant	50	70.00	250	10.00	8
Mfg. milk processing plant	50	47.66	120	10.00	8
Mfg. of frozen products for retail sale	10	42.50	100	10.00	4
Producer/distributor or producer/manufacturer	25	37.83	100	2.00	6
Wholesale milk distributor	25	150.00	150	150.00	1
Milk sampler (original)	5	8.67	25	2.00	9
Milk tester (original)	5	6.43	10	2.00	7

* These states include California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

** Source: A.R.S. §3-607

CONCLUSION

The dairy industry as well as the general public benefits from ODC regulatory activities. Therefore, some portion of ODC expenditures should be recovered from the industry through licensing fees. Dairy license fees have remained unchanged for over 30 years while ODC responsibilities and costs have increased substantially. As a result, the portion of the ODC program supported by license fees declined from 31 percent in fiscal year 1952-53 to only 5 percent in fiscal year 1981-82. This indicates that the industry may not be bearing an adequate portion of regulatory costs.

RECOMMENDATION

The Legislature should determine the proportion of program costs which should be recovered through license fees and should revise the fee schedule accordingly. The Legislature may wish to consider establishing this proportion as a benchmark and authorizing ODC to set fees by regulation consistent with this policy.

ROY C. COLLIER
DAIRY COMMISSIONER

BRUCE BABBITT
GOVERNOR

OFFICE OF

Dairy Commissioner

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April 22, 1983

Douglas Norton
Auditor General
111 W. Monroe, Suite 600
Phoenix, Arizona 85003

Dear Mr. Norton:

First I would like to extend my thanks to the Auditor General's staff for their input. Their responsibility is great. For the Auditor General's staff to acquire such expertise in agency operation and functions in a few short weeks, which takes directors of these agencies many years to acquire, is commendable. The staff was courteous and made great efforts not to disrupt routine office operations. Most of the recommendations received by this office were greatly appreciated and placed in force. Some were enforced prior to the audit; however, I feel several allegations of managerial oversight are unfounded.

FINDING I

Regarding accountability of Department of Health Services Laboratory cost: Prior to the attorney general's opinion concerning outside and professional services, A.R.S. 36-132A-11 was the statute that directed the Office of the Dairy Commissioner to use the DHS laboratory. "The department (DHS) shall in addition to other powers and duties vested in it by law establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analysis, and for investigations and research in matters affecting public health."

Although the monies were passed through our budget, the justification was done by DHS. This is further evidenced by the fact that the JLBC and the Executive Budget analyst had to approve the estimates that DHS made, and through their recommendations, this amount was approved by the legislators.

I think that because the monies were included in our budget, it has confused the auditors, and they have used their own interpretation, rather than statutes.

FINDING I (Continued)

Regarding need to increase competition: The invitation to bid was not misleading. It doesn't make any difference how often we need weekend testing. The requirement is needed. This was placed on the invitation. We received no calls asking us to clarify. It is not our fault the bidder does not understand. As far as time is concerned, we extended our deadline two weeks beyond what is mandated. Had there been a reasonable request to extend further, we would have done so.

Regarding dividing laboratory contracts: The Auditor General's report states that private laboratories are eligible for certification to perform microbiological analysis of Grade "A" milk and milk products. What the report failed to take into consideration is the fact that a private laboratory can only be certified by an approved state central milk laboratory. The only way for our office to use a private laboratory for Grade "A" products would be to pay the DHS to maintain a state laboratory and at the same time pay the private laboratory for actual work. Also, if the DHS had to certify the private laboratories, it seems there would be a conflict of interest for the DHS to bid at the same time.

I would have no objections to submitting bids for soft serve ice cream separately.

Regarding management data inaccurate: I take full responsibility for the discrepencies in the budget request as per auditor's report. In the years covered by this report it must be noted that this office was in turmoil. Loss of two commissioners in this short span placed a large burden on my shoulders. My only concern at the time was to keep the office afloat. There was not time for course corrections. I think the effectiveness of this office speaks for itself.

1. Since December 1979 there has been no evidence of aflatoxin exceeding limits in finished products.

2. Since 1979 there has been no evidence of over-tolerance pesticides (DDT, DDE, TDE, toxaphene, heptachlor, etc.) in the finished products.

3. When a problem has arisen such as inhibitors, salmonella, camphylobacter, this office has moved swiftly and efficiently to notify consumers, and remove from sale these products.

This is the primary function of this office. I would like to point out that during these hectic years, we were mandated to cut our budgets in midyear on two occasions. No budget records reflect this cut. Our cuts were taken from laboratory services both times. If the Auditor General's office had checked closer, the money revertments to the general fund would have verified what we told them.

Every recommendation that has been listed in the first finding, except the splitting of laboratory contracts, was fully implemented prior to the Auditor General's audit. It seems to me that it is the current problems that need to be corrected, not past problems that the agency has already corrected.

FINDING II

Prior to 1974, the milk program was shared by many state and local authorities. It was difficult in many instances to determine who had jurisdiction. If we delegate or allow counties to inspect and sample soft serve ice cream machines, we are defeating the purpose of having one regulatory agency responsible. Even though the county would take care of the machine, it would still be the Dairy Commissioner's responsibility to take care of the mix at the processing plants. When we analyze ice cream mix, it must be in the hands of the processor. If a problem arises, who has jurisdiction over the mix in transit from the processor to the ice cream machines. These are the problems arising out of split jurisdiction.

By transferring the program from state to counties would only result in transferring of cost from state to county. The taxpayer is still going to pay. Suggestion was made to increase fees to offset the cost to the counties. My recommendation would be to increase our license fees to cover the program and maintain single jurisdiction.

FINDING III

First it must be noted that most all food regulatory agencies are strictly a surveillance program. There is no way to guarantee all milk and milk products to be 100% free of deleterious substances. The fact that we are surveying the milk shed on a continuing basis prevents the milk from becoming contaminated.

Arizona has the most extensive aflatoxin and pesticide program in all of the states. We disposed of more than 2,000,000 pounds of pesticide milk in the past year. If we were to physically watch this disposal, I would need personnel around the clock to follow the movement of tainted milk. We allow tainted milk to be processed into animal feed. It is less costly to random check the warehouse at United Dairymen of Arizona for verification that this milk was powdered for animal feed. We do have copies of manifests of tainted milk. It would do no good for UDA to use this milk, other than for animal feed, because they would not get paid for it. All of our records as to disposition of milk goes to the Federal Marketing Administrator. All their receipts must be accounted for and their disposition.

In the past when an independent producer had high pesticide, we colored his milk, thus verifying it was used for only animal use.

FINDING III (Continued)

There must be a point in time when experience and faith in industry must be taken into consideration. Anybody that really wants to market a contaminated product will find a way irregardless of all the documents and inspections made. The bottom line is this - we analyze finished products on a continuing basis and we have not found one single product that contains over-tolerance pesticide or aflatoxin since November 1979. The Auditor General's report does not agree with our system, but this record has got to say something. I might add that we have established this record with a decrease in yearly budgets.

FINDING IV

We agree with this finding.

Sincerely,

Roy C. Collier

Roy C. Collier,
Dairy Commissioner

RCC:jg