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Progress Report

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Consumer Protection Program Increases Some Fees; Some Revenue and Efficiency Opportunities Remain

at a glance

As we recommended in our November 2001 review of the Consumer Protection Program, the Department of Agriculture and Consumer Services and the Legislature modified fees to better cover program costs. However, program-generated revenues still do not cover all of the costs for regulating pesticides and weighing and measuring devices.

The department is implementing risk-based inspections for weighing and measuring devices and periodically examines whether regulation of small businesses continues to benefit the public. The Legislature authorized risk-based inspections for certain fair rides.

The department evaluated but did not implement four-day workweeks for program inspectors, outsourcing of the consumer services telephone call center, and outsourcing of fair ride inspections. A rider misbehavior law was not enacted and administration of the Lemon Law was not consolidated within the Department of Legal Affairs.

Purpose

In accordance with state law, this progress report informs the Legislature of the actions taken in response to the findings and recommendations included in our 2001 justification review of the Consumer Protection Program administered by the Department of Agriculture and Consumer Services.^{1,2}

¹ Section 11.51(6), *Florida Statutes*.

Background

The mission of the Department of Agriculture and Consumer Services' Consumer Protection Program is to assist and protect consumers from unlawful, unethical, and unsafe business practices. The program comprises three divisions.

The Division of Agricultural Environmental Services regulates the mosquito and pest control industries and registers, analyzes, and licenses feed, seed, and fertilizer products to help ensure the safety of Florida's ecosystems and citizens.

The Division of Consumer Services regulates a variety of industries, including pawnbrokers, telemarketers, health studios, ballroom dance studios, and motor vehicle repair shops. Along with the Department of Legal Affairs, it implements the Florida New Vehicle Warranty Enforcement Act (commonly known as the Lemon Law). The division functions as the U.S. Consumer Product Safety Commission's agent in Florida for product recalls, inspections, and investigations. The division also operates a toll free consumer assistance call center. Effective January 2002, the division is responsible for regulating intrastate movers of household goods within Florida.

² *Justification Review of the Consumer Protection Program within the Department of Agriculture and Consumer Services*, [Report No. 01-51](#), November 2001.

The Division of Standards regulates several businesses and business activities through its four bureaus. The Bureau of Fair Rides Inspection inspects amusement devices at most theme and water parks, as well as at temporary events such as fairs, carnivals and festivals.³ The Bureau of Liquefied Petroleum (LP) Gas licenses, inspects, and conducts accident investigation for liquid petroleum gas businesses. The Bureau of Petroleum tests the quality of petroleum, brake fluid, and antifreeze products sold in Florida. The bureau also inspects gas pumps to ensure that consumers receive the amount of gas for which they pay. The Bureau of Weights and Measures inspects commercial weighing and measuring devices and packaged goods produced and sold in Florida. The bureau also enforces compliance with truth-in-labeling laws for dry goods, building and construction materials, gardening products, and other products.

Resources. As shown in Exhibit 1, the Legislature funds the Consumer Protection Program through a combination of general revenue and trust funds. The program was appropriated \$32,989,231 and 514 positions in Fiscal Year 2003-04. Trust funds comprised 78.2% of the program's appropriation, while general revenue comprised the remaining 21.8%.⁴

**Exhibit 1
General Revenue Accounts for 21.8% of the
Consumer Protection Program's Appropriation**

Division	General Revenue	Trust Fund	Total	FTE
Agricultural				
Environmental				
Services	\$4,655,360	\$12,137,328	\$16,792,688	207
Consumer				
Services	500,668	5,376,614	5,877,282	117
Standards	2,040,488	8,278,773	10,319,261	190
Total	\$7,196,516	\$25,792,715	\$32,989,231	514

Source: General Appropriations Act for Fiscal Year 2003-04.

³ Busch Gardens, Universal Studios, and Disney World are statutorily exempt from state amusement device regulation because they each employ at least 1,000 full-time employees and have full-time, in-house safety inspectors.

⁴ Sources of trust fund revenues include registration fees from regulated industries such as motor vehicle repair shops, pesticide companies, pawnshops, and owners of amusement rides. Trust fund revenues are also derived from the proceeds of a one-eighth of one-cent inspection fee levied on petroleum products sold in Florida.

Prior Findings

Our prior report analyzed the funding structure of the Consumer Protection Program and identified options to enable the program to generate additional revenues and reduce costs. We concluded that the Legislature and the department could reduce the need for general revenue and revenue from other department programs by \$4.8 million by

- increasing regulatory fees to levels that fully support program costs for fair ride inspection, pesticide regulation, weighing and measuring device inspection, and motor vehicle repair shop licensing;
- allowing program inspectors to work four-day workweeks to reduce travel costs; and
- consolidating administration of the Lemon Law within the Department of Legal Affairs.

We also determined that the program could make more efficient use of its resources by

- implementing risk-based inspection methods for fair rides and weighing and measuring device inspections;
- outsourcing the operation of the consumer services telephone call center and fair ride inspections; and
- monitoring whether the program's regulation of small industries continues to provide a public benefit and considering eliminating regulation when a public benefit is no longer demonstrated.

To potentially decrease the number of fair ride accidents, we recommended that the Legislature revise statutes to establish a rider misbehavior law. This law would require the ride patrons to obey posted rules and warnings and refrain from acting in any manner that may cause or contribute to injuring the patron or others. Failure to do so could result in a misdemeanor charge or civil penalty.

Current Status

The Legislature and department have implemented many of our recommendations, but additional steps could be taken to reduce costs and improve operations.

Some program fees have been modified, but additional fee opportunities exist

The Legislature and department partially implemented our recommendations to modify various program fees.

Fair ride inspection fees. The department revised Rule 5F-8.012, *Florida Administrative Code*, to increase various fair ride fees.⁵ Fee revenues currently cover all of the direct and most of the indirect costs for fair ride inspections, which eliminated this function's need for general revenue funding (\$500,000 in Fiscal Year 2000-01).

Pesticide regulation fees. The department and Legislature have increased fees for pesticide regulation, but fee revenues still do not cover all of the costs of this function. For Fiscal Year 2002-03, pesticide regulation revenues fell short of covering expenditures by \$1,646,811. This shortfall was covered by general revenue and revenues from other department programs.

The department revised Rule 5E-9.028, *Florida Administrative Code*, to increase the fees for pesticide applicator and dealer licenses.⁶ However, the department did not increase the fees to the statutory maximums as we recommended.

In Fiscal Year 2002-03, the department issued 12,247 pesticide applicator and dealer licenses, which generated \$386,945. If the department had increased the fees to the statutory maximums during its last modification, the department would have generated an additional \$212,330. We continue to recommend that the department increase the applicator and dealer license fees to the statutory maximums.⁷

The 2002 Legislature revised statutes to increase the department's annual pesticide registration fees from \$225 to \$250. In Fiscal Year 2002-03, 13,444 pesticide brands were registered with the department, which generated \$3,370,152.

Eliminating the revenue shortfall for pesticide regulation would require increasing the maximum pesticide registration fee to \$373.⁸

Weighing and measuring device fees. The Legislature has not chosen to revise statutes to authorize an annual registration fee for weighing and measuring devices. Weighing and measuring device inspections revenues fell short of expenses by \$2,084,365, of which \$1,965,608 was covered by general revenue in Fiscal Year 2002-03. Our prior review found that 21 other states assess regulatory fees to cover all or part of the cost of regulating these devices.

Motor vehicle repair shop licensing fees. Although statutes were not revised to increase annual registration fees for motor vehicle repair shops, Fiscal Year 2002-03 revenues for this activity were closer to covering expenses than in previous years (a loss of approximately \$35,000 compared to a loss of \$300,000 for Fiscal Year 1999-00). This was primarily due to an increase in collection of administrative fines, a decrease in expenses because the department has finished accounting for the costs of a new data system, and a decreased allocation of overhead costs because other division activities have grown and are therefore assuming more of the cost allocation.

Four-day workweeks piloted but not implemented

As we recommended, the department conducted a pilot study to allow program inspectors to work four-day workweeks. The department determined that while efficiency increased, the change did not result in material cost savings. While the department does not currently plan to adopt four-day workweeks, it should periodically re-examine the option and keep it under consideration if it determines that the arrangement would be beneficial to the department.

Lemon Law administration has not been consolidated

The Legislature has not chosen to consolidate administration of the Lemon Law within the Department of Legal Affairs. We estimated that a

⁵ The rule change was effective January 2002.

⁶ The rule change was effective March 2002.

⁷ The department is required by statute to annually review applicator and dealer fees and adjust them to reflect the cost of administering the pesticide regulation program.

⁸ If the department increased the applicator and dealer license fees to the statutory maximums, then the pesticide registration fee would need to be increased to \$357 to cover remaining pesticide regulation costs.

consolidation would result in a cost savings of \$32,687 from staffing reductions. Currently, the Department of Legal Affairs administers the Lemon Law Arbitration Program, while the Department of Agriculture and Consumer Services initially screens Lemon Law complaints and forwards those qualifying for arbitration to the Department of Legal Affairs, along with those rejected for arbitration. Department of Legal Affairs employees review all of the complaints that are received, duplicating the review by the Department of Agriculture and Consumer Services staff.

Risk-based inspections authorized

The 2002 Legislature revised statutes to allow less frequent inspections for certain types of fair rides. The statute created a special class of small “kiddie” rides that do not require set-up inspections when they are used at small public events that have three or less amusement rides present.⁹ This type of ride has a low risk of injury to ride patrons. The department is still required to inspect all other temporary amusement devices each time the ride is set up or moved to a new location.¹⁰ Risk-based inspections allow the department to concentrate its limited resources on the entities or items that are most at risk of noncompliance.

The department is in the process of collecting data to implement a risk-based inspection system for weighing and measuring device inspections.

Consumer service call center and fair ride inspections were not outsourced

The department examined but did not implement outsourcing of the consumer services telephone call center and fair ride inspections. Department managers report that feasibility and cost savings are uncertain and they are concerned about being able to maintain the quality of fair ride inspections if outsourced.

⁹ The rides in this class only include those with a capacity of 12 or less, and must be inspected twice annually.

¹⁰ Permanent amusement devices must be inspected semi-annually. Busch Gardens, Universal Studios, and Disney World are statutorily exempt from state amusement device regulation because they each employ at least 1,000 full-time employees and have full-time, in-house safety inspectors.

Moreover, the Legislature has not authorized the department to contract with private consultants to inspect temporary amusement devices at each set-up and conduct the semi-annual inspections of permanent amusement devices.^{11, 12}

Regulation of small industries is being periodically monitored

Department administrators told us that they monitor the regulation of small industries and do not see the need to de-regulate any industries at this time. The department should continue to monitor whether its regulatory consumer protection programs continue to provide a public benefit. If these programs fail to demonstrate this benefit, the department should recommend to the Legislature that they be eliminated.¹³

Rider misbehavior law not enacted

Although, the Legislature has not enacted a rider misbehavior law, the department has adopted standards from the American Society of Testing and Materials or ASTM, which address fair ride patron responsibility.

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¹¹ Currently, statutes authorize private engineers to conduct the annual inspection of fair rides.

¹² The Legislature removed the department’s authority as the statewide clearinghouse for consumer complaints and eliminated the seven positions handling the complaints, as well as the funding for those positions. This reduction in authority and funding reduced the cost of this activity by \$255,391.

¹³ The federal Do-Not-Call registry, which took effect October 2003, may affect the department’s authority and/or need to regulate telemarketers. The department has issued a report stating that it cannot determine the impact at this time.