

LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
Angie Grove

MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Megan Coy, Senior Performance Auditor
CC: Christian Mackay, Executive Officer, Department of Livestock
John Grainger, Brands Enforcement Division Administrator, Department of Livestock
DATE: August 2012
RE: Performance Audit Follow-Up (12SP-06): Recording of Livestock Brand Ownership (orig. 09P-12)
ATTACHMENTS: Original Performance Audit Summary

Introduction

In March 2009, we presented our performance audit titled "*Recording of Livestock Brand Ownership.*" The audit included ten recommendations to the Department of Livestock (department). In March 2012, we began gathering preliminary information from the department related to progress in implementing the recommendations. This memo summarizes the results of our follow-up work.

Overview

The Department of Livestock is responsible for tracking livestock ownership through the regulation of livestock and livestock brands in the state of Montana. The department issues new brands and processes transfers of brand ownership. In addition, as required by statute, the department rerecords brand ownership every ten years. Our audit found that improvements could be made in the department's processes used for recording brand ownership and overall management of brands-related activities. Of the ten recommendations we made to the department, nine have been or are being implemented and one has not been implemented. Additionally, we noted an instance where, though the department implemented one of our recommendations, related actions constitute noncompliance with statute.

Background

The mission of the Department of Livestock is to control and eradicate animal diseases, prevent the transmission of animal diseases to humans, and to protect the livestock industry from theft and predatory animals. As a means for protecting the livestock industry, the Brands Enforcement Division is charged with tracking livestock ownership through the regulation of livestock and livestock brands in the state of Montana. The division issues livestock brands and processes transfers of brand ownership. Per statute, the division rerecords brand ownership every ten years and has done so since 1911. The most recent rerecord occurred in 2011. The objectives of this audit pertained to the department's overall management of brands-related activities, including the associated fees, and the processes used for assignment and recording of brand ownership.

Follow-up Audit Findings

The following sections summarize the progress toward implementation of the audit recommendations.

RECOMMENDATION #1

We recommend the Department of Livestock develop detailed policies and procedures pertaining to its brands-related activities.

Implementation Status – Implemented

The department implemented this recommendation by adopting administrative rule and developing documented internal procedures regarding the recording and transferring of brand ownership. This guidance covers areas such as processing of new brand applications, related fees and refunds, conflict-checking procedures, and brand rerecord. The effect of these changes should be a standardization of the processes for recording and transferring brand ownership.

RECOMMENDATION #2

We recommend the Department of Livestock:

- A. Establish file documentation requirements to ensure files related to the recording of brand ownership contain all necessary information and support key decisions.**
- B. Regularly evaluate its information needs and update agency forms to reflect those needs.**

Implementation Status – Implemented

The department fully implemented both parts of this recommendation. The implementation of a new information system for tracking brands-related information, discussed further under Recommendation #3, allows agency staff to document owner information and department activities associated with each brand. In addition, the department has revised its new brand application to reflect its information needs and created a new form for use by the Brand Recorder to document the conflict-checking process associated with new brand applications.

RECOMMENDATION #3

We recommend the Department of Livestock improve its access to key management information such as:

- ▶ **Number of brands recorded**
- ▶ **Number of brand owners with recorded brands**
- ▶ **Number of security interests recorded**
- ▶ **Status of files requiring further action**

Implementation Status – Implemented

The department implemented a new information system for managing brand-related information in 2011. Previously, brand information was stored on a batch-based system in which information was input in a queue by staff and then uploaded into the main system in batches by a contractor approximately every two weeks. Information stored in the queues was not readily accessible to department staff. Additionally, the department was unable to run management reports about basic brands-related activities, such as the number of brands recorded.

The new information system allows the agency to better track information about each brand and brand owner and the department activities associated with both. Staff can search the system by a number of variables associated with a brand including brand owners, brand characters, the counties in which a brand

is active, brand position, and more. In addition, the department is using the system to track fee payments associated with each brand transaction. Furthermore, information entered into the system is available to agency staff upon entry. Department staff can now run a number of management reports including those which show all transactions in which fees were paid directly to the Brand Recorder or all brands-related activities occurring during a specific time period. Department management report they are still making improvements to the system as needs are identified and currently are working on improvements which will allow the system to check brand conflicts.

RECOMMENDATION #4

We recommend the Department of Livestock strengthen its cash management controls for brands-related activities.

Implementation Status – Implemented

During our audit, we found the potential for theft within the department's cash collection process was increased in some areas. The department made several changes over the past two years to strengthen its cash management controls for brands-related activities. Previously, if a brands-related cash transaction occurred in the Brand Recorder's office, there was no documentation of the cash received or the associated activities (i.e. new brand issued, transfer of brand ownership, etc.). The potential existed that a new brand certificate could be issued without funds having been received by the department. The department is using its new information system to address this. The system requires staff to enter how fees were received (either over-the-counter or by mail), the transmittal number assigned, and the brand identification number associated with the transaction. Each day the Brand Recorder generates a report which shows daily transactions and submits the report to the department's Centralized Services Division (CSD) with the funds to be deposited. Because of system settings, before a new brand certificate can be issued, staff must input the receipt of a fee, which then shows up on the daily report. CSD staff reconcile the funds received with the daily report.

RECOMMENDATION #5

We recommend the Department of Livestock:

- A. Establish policy and procedures for refunding application fees.**
- B. Establish time-limits for processing of new brand applications and brand transfer requests.**
- C. Evaluate its current conflict-checking procedures to determine if the process could be carried out more efficiently.**
- D. Establish policy governing the denial of applications and rejection of incomplete applications.**

Implementation Status – Being Implemented

The department implemented parts A, B, and D of this recommendation by adopting administrative rule and internal procedures regarding the recording and transferring of brand ownership. The department's refund policy, which is formalized in administrative rule, states that fifty percent of the fee to record a brand is nonrefundable. If a new brand applicant fails to respond to correspondence from the Brand Recorder for a period of more than six months, the entire fee becomes nonrefundable. In addition, both administrative rule and internal policy define the processing of new brand applications, including what should be done in the event that applicant's brand request(s) are unavailable and the application is denied.

The department is in the process of implementing part C of this recommendation. In order to improve the efficiency of its conflict-checking procedures, the department coordinated with field staff to review its standard conflicts to determine their appropriateness. In doing so, the department identified some conflicts which could be eliminated and management estimates that 33 percent more brands will be

available because of these eliminations. The standard conflicts recognized by the department are formalized in internal policy. Additionally, as noted, the department is currently making changes to its information system for recording brands-related information which will enable the system to check brand conflicts.

RECOMMENDATION #6

We recommend the Department of Livestock process all new brand applications and brand transfer requests according to the date received by the department.

Implementation Status – Not Implemented

The department has not implemented this recommendation. Although applications and transfer requests which are mailed, e-mailed, or faxed are processed in the order they are received by the department, those applications physically brought to the Brand Recorder continue to be processed first.

RECOMMENDATION #7

We recommend the Department of Livestock only process applications for which there is an accompanying fee.

Implementation Status – Implemented

The department implemented this recommendation through the development of internal procedure regarding the processing of new brand applications and transfer requests. Procedures specifically state that new applications and transfer requests must be submitted to the department with the appropriate fee. In addition, staff report they do not process applications with no fee and the files we reviewed all showed documentation of the department's receipt of the appropriate fee.

RECOMMENDATION #8

We recommend the Department of Livestock:

- A. Take action to ensure fees are commensurate with costs, in accordance with §§81-1-102 and 37-1-134, MCA.**
- B. Maintain records sufficient to support fees charged for each brands-related function, in accordance with §§81-1-102 and 37-1-134, MCA.**

Implementation Status – Implemented

Each year, the department receives livestock head counts compiled by the Department of Revenue as part of its collection of per capita fees. Agency management uses these numbers to compile a budget analysis for the upcoming year, using data from previous years and containing a revenue projection. This information is presented to the Board of Livestock for use in determining if a fee adjustment is necessary to ensure fees are commensurate with costs. For example, the department altered their policy so that \$50 of the \$100 fee for new brand applications is nonrefundable to cover department costs of application processing. The records regarding this process are maintained by CSD.

RECOMMENDATION #9

We recommend the Department of Livestock take steps to ensure compliance with state law by rerecording all brands within the designated rerecord year.

Implementation Status – Implemented

Department efforts in preparation of the 2011 brand rerecord began in early 2010. During 2010, the department focused on updating brand owner addresses in anticipation of sending out brand rerecord

notices in early 2011. Each brand owner received a postcard by mail for each brand owned. The postcards provided information about the brand recorded and the how to rerecord. In total, 54,805 postcards were sent out by the department. Brand owners were able to rerecord either by mail or online. In total, 84.6 percent of brands were recorded; 37.6 percent were rerecorded by mail, 57 percent online, and 5.4 percent by other means. The department rerecorded the final brand at 11:45 p.m. on December 31, 2011.

Prior to and during the rerecord year, the department made numerous efforts to notify brand owners of rerecord. As discussed, individual postcards were mailed to each brand owner. In addition, numerous notices were published in newspapers around the state and in industry publications. Stakeholder organizations were notified and department staff discussed rerecord at every public meeting attended. In some counties, local sheriffs hand-delivered rerecord postcards which had been returned to the department by the postal service. Despite all of this, there were some brand owners who wished to keep their brands but failed to rerecord during the appropriate time period. In multiple instances, these brand owners attempted to regain their brands through new brand applications, but were unable to do so because their brands conflicted with other recorded brands.

Because of pressure from brand owners and state legislators, at their March 2012 meeting, the Board of Livestock voted to suspend its policy regarding brand conflicts for brand owners whose brands expired at the end of rerecord, but could show that the brand had been actively used within the last three years. The period of suspension of the conflict policy was March 14 through May 14, 2012. Brands issued during the period in which the policy was suspended were treated as new brands; however, applicants were charged a penalty of \$500, plus the new brand application fee of \$100. In total, the department collected over \$61,000 in penalties.

While the Board of Livestock and department actions do not constitute a grace period, and thus comply with §81-3-104, MCA, which states that “each 10th year after 1921 is the year for rerecording artificial marks and brands...”, the suspension of the Board’s conflict policy represents noncompliance with §81-3-103(2), MCA. This statute requires the department, as part of its duties for recording brands, “shall designate for the applicant’s use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded...” By not checking conflicts for the brands subject to the policy suspension, the department intentionally issued brands which were not “distinguishable with reasonable certainty” from brands currently recorded. The department’s noncompliance with statute occurred only during the time period in which the conflict policy was suspended. It is not ongoing and department management do not anticipate it reoccurring during the next rerecord.

RECOMMENDATION #10

We recommend the Department of Livestock re-examine the cycle for rerecording brand ownership to determine if it meets the needs of today’s livestock industry.

Implementation Status – Implemented

During the 2011 brand rerecord, the department surveyed brand owners regarding the ten-year rerecord cycle. The first of the survey’s five questions asked about the ten-year rerecord cycle and whether the survey taker thought the cycle was adequate or if shorter cycles would be more appropriate. Five-year, two-year, and an annual cycle, as well as an option to select “other,” were offered as alternative choices. In total, 6,307 brand owners answered the question regarding the rerecord cycle and 97 percent indicated the ten-year cycle was adequate. Based on this response, the department does not plan to further examine the rerecord cycle.