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Missouri State Auditor

PUBLIC SAFETY

Fireworks Licensing and Inspection

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Additional Resources and Other Changes Would Benefit the Fireworks Program

The Division of Fire Safety (DFS) has the responsibility for permitting and inspecting fireworks businesses and displays and licensing fireworks display operators. The audit objectives included (1) evaluating the fireworks program funding and the division's management and oversight of the program, (2) evaluating the permitting, licensing, and inspection processes and procedures and (3) analyzing state law and regulations and any potential changes needed.

No change in core budget funding for the fireworks program	DFS has not received additional core budget funding for implementation of the fireworks law responsibilities since program inception. The division has absorbed all personnel time and expenses associated with administering the fireworks program from the existing staff and core budget. (See page 10)
Penalties rare for noncompliance	DFS staff did not often revoke permits and licenses or report violators to law enforcement. State law establishes civil or criminal penalties for fireworks business owners operating without appropriate permits or noncompliance. DFS officials said violations not pertaining to illegal fireworks are generally not submitted to the local prosecuting attorney because many types of violations would not be severe enough to warrant prosecution because the cost of enforcement exceeds the penalties. (See page 13)
Limited procedures to identify non-permitted activities	DFS has established limited procedures to periodically search for non-permitted fireworks activities. We found possible non-permitted fireworks businesses and displays. Nebraska and Tennessee report state permitted fireworks businesses and/or operators on a state Web site to assist local jurisdictions and the public in identifying businesses not permitted. A DFS official said DFS does not have the resources necessary to proactively identify fireworks businesses, operators, or displays operating without a permit. The official also said the short seasonal timeframes impact the identification process. (See page 13)
Inspection process needs improvement	Inspections performed are not based on a risk basis or rotational cycle. Eighty percent of the cities in calendar years 2005 and 2006 and 63 percent of the cities in calendar years 2005, 2006, and 2007 had one or no seasonal retailers inspected. Inspections of distributors, jobbers, and wholesalers are not frequently performed. In 2007, DFS staff re-inspected only about 50 percent of businesses with inspection violations. DFS officials said staffing limitations and the short seasonal timeframe prevent seasonal retailers from being inspected annually. (See page 18)
Different compliance standards for local jurisdictions	State law is inconsistent as local jurisdictions are not required to comply with the same minimum fireworks requirements as DFS when either permitting or inspecting displays, proximate fireworks displays, or seasonal retailers. (See page 21)

Operator licensing needs
improvement

Analysis of the division's operator licensing processes identified (1) validation of a federal license had been obtained prior to state licensing did not always occur, (2) state law needs to be clarified to allow DFS to perform complete background checks, and (3) some state regulations need clarification. During our review, we found licensed operators who do not possess a federal license or permit. (See page 23)

Other law changes

Missouri fireworks law does not include some requirements other states have found beneficial for their fireworks programs. Arkansas requires fireworks distributors, jobbers, and wholesalers and Georgia requires manufacturers to furnish proof of financial responsibility to ensure the business would have coverage if an accident occurred. Alabama, Arkansas and Tennessee require certain fireworks permit holders to maintain accurate records of sale, shipment or purchases or allow the State Fire Marshal access to these records. (See page 26)

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CSR	Code of State Regulations
DFS	Division of Fire Safety
DIFP	Department of Insurance, Financial Institutions and Professional Registration
DOR	Department of Revenue
DPS	Department of Public Safety
FEL	Federal Explosive License
MSHP	Missouri State Highway Patrol
NFPA	National Fire Protection Association
RSMo	Missouri Revised Statutes
OA	Office of Administration
SAO	State Auditor's Office



SUSAN MONTEE, CPA
Missouri State Auditor

Honorable Matt Blunt, Governor
and
Members of the General Assembly
and
Michael Keathley, Commissioner
Office of Administration
and
Mark James, Director
Department of Public Safety
Jefferson City, MO

The Department of Public Safety, Division of Fire Safety (DFS) has the responsibility for permitting and inspecting fireworks businesses and displays and licensing fireworks display operators. Our audit objectives included (1) evaluating the fireworks program funding and the division's management and oversight of the program; (2) evaluating the permitting, licensing, and inspection processes and procedures; and (3) analyzing state law and regulations and any potential changes needed.

DFS has not received budget funding for implementation of its fireworks program. Budget requests have been unsuccessful, but options exist to provide possible funding. In addition, management procedures limit (1) sanctions or penalties imposed for permit recipients not complying with law and regulations, and (2) identification of non-permitted businesses.

Improvements to the state's inspection, permitting and licensing processes and changes to state law and regulations are needed. These areas need improvement because (1) DFS does not perform inspections on a risk and/or rotational basis, (2) state law allows local jurisdictions to set minimum compliance standards that are different than DFS standards, (3) licensing procedures have not ensured operators meet compliance requirements, (4) display and proximate fireworks display regulations lack key guidance requirements, (5) permit applications lack some information needed to determine eligibility, and (6) state law does not include some requirements other states have found beneficial for their fireworks programs.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis. This report was prepared under the direction of John Blattel. Key contributors to this report included Jon Halwes, Amanda Locke, and Edward Morgan.

A handwritten signature in cursive script that reads "Susan Montee".

Susan Montee, CPA
State Auditor

Introduction

The Division of Fire Safety (DFS) under the direction of the State Fire Marshal is responsible for the oversight and management of several programs, including fire safety inspections, fire investigations, fireworks licensing and inspection, fire fighter training and certification, national fire incident reporting, boiler and pressure vessel inspections, elevator safety, amusement ride safety, private fire investigator licensing, and blaster licensing.

DFS's Investigation Unit is responsible for permitting all fireworks businesses, licensing operators, inspecting businesses where fireworks are stored, manufactured, kept or being offered for sale, and investigating the fireworks industry in Missouri. DFS and/or local fire service authorities are responsible for permitting and inspecting display or proximate fireworks displays in the state.

State Fireworks Law and Regulations

The General Assembly enacted the statewide fireworks licensing and inspection law¹ in 1985. The law requires DFS to permit fireworks manufacturers, distributors, wholesalers, jobbers, and seasonal retailers. The law also grants the DFS the authority to inspect and investigate those businesses. The General Assembly amended the law in 2004 requiring proximate fireworks displays be permitted, defining display fireworks, as well as requiring the licensing of operators. The types and the respective descriptions of each of the required permits and licenses include:

Manufacturer

Any person engaged in the business of making fireworks of any kind in Missouri.

Distributor

Any person engaged in the business of selling fireworks to wholesalers, jobbers, seasonal retailers, or others that possess the necessary permits, including any person that imports any fireworks of any kind in any manner into Missouri.

Wholesaler

Any person engaged in the business of making sales of consumer fireworks to any other person engaged in the business of making sales of consumer fireworks at retail within the state.

¹ Section 320.106 - 320.161, RSMo.

Jobber

Any person engaged in the business of making sales of consumer fireworks at wholesale or retail within Missouri to non-licensed buyers for use and distribution outside Missouri during a calendar year or at retail to consumers during the fireworks season.²

Seasonal retailer

Any person within Missouri engaged in the business of making retail sales of consumer fireworks in Missouri only during the fireworks season.

Proximate fireworks displays

A presentation of indoor fireworks shows or outdoor fireworks shows with a closer proximity to the audience than fireworks displays for a public or private gathering, such as those at theaters, sporting events, and concerts.

Fireworks displays

A presentation of outdoor fireworks shows for a public or private gathering, such as those during the Fourth of July.

Operator

Any person responsible for shooting pyrotechnic fireworks at a display or proximate fireworks display. There are two types of operators (1) a licensed operator or any person who supervises, manages, or directs the discharge of outdoor display fireworks, either by manual or electrical means and (2) a pyrotechnic operator or any person responsible for pyrotechnic safety and who controls, initiates, or otherwise creates special effects for proximate fireworks.

All permits except for seasonal retailers shall be for the calendar year or any fraction thereof and shall expire at the end December of each year. Seasonal retailer permits are valid for the fireworks season timeframes. Operator licenses are issued for 3 years.

Fireworks program
funding

Prior to 2004, state law³ required revenue generated from fireworks permit and license fees be deposited in the General Revenue Fund. In 2004, the General Assembly amended state law by requiring all fireworks permit and license fees be deposited in the Fire Education Fund.

² Fireworks season is the period of June 20 through July 10 and December 20 through January 2 of the next year. The fireworks season is approximately 15 working days.

³ Section 320.111, RSMo.

Fire Education Fund

State law requires revenue deposited in the Fire Education Fund be used by DFS to coordinate training and continuing education for Missouri firefighters relating to fire department operations and the personal safety of firefighters while performing fire department activities.

Fee changes

The General Assembly increased the permit fees of manufacturers, distributors, wholesalers, jobbers and seasonal retailers by \$25 each in 2004. Prior to 2004, the permit fees had not changed since 1985 except for the seasonal retailer permit fees. Seasonal retailer permit fees increased from \$10 in 1985, to \$25 in 1987 and to \$50 in 2004. The permit fee for a fireworks display increased by \$75 with the law change in 2004. The 2004 law change established operator and proximate fireworks display fees. Table 1.1 shows the permit and license fees, established in 2004, as well as the respective revenue generated from the fees for calendar year 2006.

Table 1.1: Permit and License Fees and Respective Revenue for Calendar Year 2006

Type of Permit/License	Fee	Number of permit/license issued for 2006	Total Revenue
Manufacturer	\$775	7	\$5,425
Distributor	775	50	38,750
Wholesaler	275	8	2,200
Jobber	525	72	37,800
Seasonal Retailer	50	1,361	68,050
Display Fireworks	100	14	1,400
Proximate Fireworks Display	100	2	200
Operators ¹	100	83	8,300
Total		1,597	\$162,125

¹The number of operators licensed is cyclical as the operator licenses are issued for 3 years. Operator licenses were initially issued in calendar year 2004 so the number of permits issued in 2006 is substantially less than prior years as 2005 had 576 operator licenses issued.

Source: SAO analysis based on fireworks permits and licenses issued by DFS.

Display, proximate fireworks display and operator requirements

State law⁴ requires any display or proximate fireworks display to have a permit issued by either the State Fire Marshal or the local fire service authorities of the community where the display is to be held. The law requires an inspection of the display site prior to the discharge of display or proximate fireworks display and proof of financial responsibility from the applicant in an amount established by promulgated rule. All permits issued for display or proximate fireworks display by the local fire service authorities are to be forwarded to the State Fire Marshal's office by the permittee within 45 days of the display or upon request from the State Fire

⁴ Section 320.126, RSMo.

Marshal. The law requires any display to be supervised, managed, or directed by a Missouri licensed operator or pyrotechnic operator. To be licensed as an operator, law and regulations⁵ require an operator to complete pyrotechnic training courses, pass an exam administered by DFS, not have a felony conviction or have plead guilty to a felony, be federally licensed or permitted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), actively participate in at least three displays of which at least one must have occurred in the current or preceding year and meet additional requirements established by the regulations.

Federal Regulations

The fireworks industry is regulated by federal law, in addition to state law. The United States Department of Justice ATF is responsible for licensing or permitting (1) manufacturers of consumer and display fireworks, (2) distributors of display fireworks, and (3) users of display fireworks. ATF issues a Federal Explosives License (FEL) to either individuals or businesses. If a FEL is issued for a business, then a listing of responsible persons and, if applicable, a listing of employee possessors is to be submitted to ATF. Responsible persons⁶ and employee possessors⁷ are able to perform duties, such as shoot fireworks, under a business's FEL. State law⁸ and/or regulations requires certain applicants to have obtained a federal license or permit prior to DFS staff issuing a manufacturer or distributor permit or an operator license.

Scope and Methodology

In conducting our review of the fireworks program, we interviewed officials and staff at the Department of Public Safety (DPS), DFS, Missouri State Highway Patrol (MSHP), Office of Administration (OA), Department of Revenue (DOR), Department of Insurance, Financial Institutions and Professional Registration (DIFP), and the federal ATF. We also reviewed policies, procedures, state law, regulations and other applicable information.

To evaluate Missouri's law and regulations, we compared them to the laws and regulations in 12 other states (Alabama, Arkansas, Colorado, Georgia, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Oklahoma, Tennessee, and Wisconsin). We contacted fire safety officials in Arkansas, Nebraska, Oklahoma, Georgia and Tennessee to validate certain information obtained from reviewing the law.

⁵ Section 320.106, RSMo and 11 CSR 40-3.010.

⁶ ATF defines a responsible person as an individual who has the power to direct the applicant's management and policies pertaining to explosive materials.

⁷ ATF defines an employee possessor as an individual who has the actual or constructive possession of explosive materials during the course of his/her employment.

⁸ Section 320.111, RSMo.

To evaluate the costs associated with administering the fireworks licensing and inspection program, we reviewed Senate Bill 1196 (2004) and its related fiscal notes, and division new decision budget item requests for fiscal years 2004, 2006, 2007, 2008, and 2009. We also obtained an analysis performed by DFS to determine the estimated percentage of personnel costs associated with administering the fireworks program. We obtained DFS's fireworks expenditure data for fiscal year 2006 from the statewide accounting system. We compared the permit fees established in the other 12 states to the fees assessed in Missouri.

To evaluate potential funding for the Fire Education Fund from insurance company premium taxes, we reviewed the calculation performed by OA, applicable state law⁹ and interviewed officials at OA, DIFP, and DOR.

We obtained DFS's permit databases of manufacturers, distributors, wholesalers, jobbers, seasonal retailers, displays or proximate fireworks displays for calendar years 2005 and 2006 as of June 2007 and calendar year 2007 as of August 2007. We obtained the inspection violations maintained in the permit database for calendar year 2006 as of July 2007. We obtained DFS's license database of operators as of July 2007. To verify completeness, we reviewed the data to ensure all types of permit and license classifications had been included in the data we received.¹⁰

To determine whether controls to ensure fireworks businesses operating in the state are permitted, we performed Internet searches, obtained a listing of businesses that had registered and/or paid local sales tax in calendar year 2006 from the DOR, and identified known fireworks businesses or displays. We compared our results to businesses and displays listed in DFS's permit database. For displays or proximate fireworks displays, we also compared our results to those permitted by the local fire service authorities based on the permits DFS had received from the permittee or local fire service authorities. We provided the results to a DFS official for review and analysis as of September 2007.

To evaluate controls to permit or license a fireworks applicant, we judgmentally selected 50 records comprised of permitted businesses, displays, proximate fireworks displays, and licensed operators in both

⁹ Section 148.310 to 148.461, RSMo, and Section 375.916, RSMo.

¹⁰ SAO obtained the hard copies of the inspections performed by DFS during the seasonal retail timeframe and manually entered the results into the permit database by permittee. A DFS official indicated the inspections are not entered into the permit database until the winter months, which was after fieldwork would be complete.

calendar years 2006 and 2007 from the data in the permit and license databases. We evaluated whether required documentation per the law and regulations had been maintained by DFS to support the permit, license and/or inspection.

To evaluate DFS's inspection processes and procedures, we observed DFS staff conduct site inspections of three different seasonal retailers and re-inspections of two of those retailers. To analyze the frequency permit recipients received an inspection, we summarized the total permitted locations and total inspections performed by city and by each calendar year. We provided the results to DFS officials for review as of October 2007.

To determine the processes and procedures performed by local jurisdictions when permitting and inspecting seasonal retailers, displays or proximate fireworks displays, we contacted fire safety officials in the cities of Branson, Holts Summit, Jefferson City and Springfield. We compared the processes and procedures performed by the local jurisdictions to those established by DFS.

We obtained a data file of the individuals who have a FEL, responsible person or an employee possessor permit as of June 2007 from ATF. We did not rely on data from ATF to draw overall conclusions so we did not perform specific procedures to determine data validity.

To determine whether the state licensed operators were federally licensed, if applicable, we matched records in DFS's licensed operator database against records from ATF. Our matches consisted of reviews based on first name and last name. If both names matched, we considered the match valid. For sixteen of the individuals who did not appear to be federally licensed, we submitted the records to ATF for evaluation. We provided the results to a DFS official as of October 2007.

To evaluate operator background histories, we submitted the 768 licensed operators per DFS's database as of July 12, 2007 to the MSHP for the patrol to perform an open records¹¹ check of the operators. We provided the results to DFS officials for review as of September 2007.

¹¹ According to the MSHP, open records are not inclusive of an individual's criminal history. An open record includes (1) arrest record for 30 days following arrest, (2) arrest record for which charges have been filed, (3) court disposition of guilty, and (4) suspended imposition of sentence during probationary period.

Additional Resources and Other Changes Would Benefit the Program

DFS has not received additional core budget funding for implementation of the fireworks law responsibilities since program inception. Budget requests have been unsuccessful, but options exist to provide possible funding. In addition, management procedures limit (1) sanctions or penalties imposed for permit recipients not complying with regulations, and (2) identification of non-permitted businesses.

No Change in Core Budget Funding for the Fireworks Program

DFS has not received additional funding per the division's core budget for personnel or expenses to support administering the fireworks program since program inception in 1985, including expanded responsibilities in 2004. DFS officials said the division has absorbed all personnel time and expenses associated with administering the program from the existing staff and core budget. A DFS official also said DFS has not received funding to support the administration of other programs, such as the private fire investigator program.

DFS has submitted the following fiscal year new decision budget item requests for funding its fireworks program, but has been unsuccessful:

- 2004 - one staff person to assist with fireworks program and other programs
- 2006 - fireworks program expenditures, excluding personnel costs

A fiscal year 2009 funding request has been made for two 1,000 hour employees to assist with administering the fireworks program and the private fire investigator program.

We requested DFS officials to estimate the costs incurred for administering the fireworks program. Table 2.1 shows the estimated expenditures for the fireworks program to be approximately \$77,731.

Table 2.1: Estimated Costs to Administer the Fireworks Program

Type of Expenditure	Amount
DFS Investigation Unit personnel	\$73,833
Other expenditures in fiscal year 2006 ¹	3,898
Total Expenditures	\$77,731

¹The estimate may be understated as it does not take into account the travel expenditures incurred by the inspectors when performing a fireworks inspection or investigation.

Source: DFS.

Fees collected go to the
Fire Education Fund

Since creation in 1998, the Fire Education Fund has not received any funding from insurance company premium taxes based on a funding formula outlined in state law.¹² In 2004, state law¹³ required the revenues from the fireworks permit and license fees be deposited to the Fire Education Fund. Prior to 2004, the revenues from fireworks permit and license fees went to the General Revenue Fund, but they were not earmarked for use by DFS.

An initial fiscal note for the 2004 legislation covering the program changes¹⁴ said the revenue generated from the fees would continue to be deposited to the General Revenue Fund. A DFS official said the division intended either the monies to be deposited to the General Revenue Fund with the funding being used to cover program costs or to a separate administrative fund for the same purpose. Subsequent fiscal notes initially split the funding between the General Revenue Fund and the Fire Education Fund with the final passed legislation sending it all to the Fire Education Fund. A DFS official said all fee revenue was allocated to the Fire Education Fund to supplement prior appropriation budget cuts in the General Revenue Fund for the fire fighter training and because the Fire Education Fund was receiving no funding under its statutory funding formula.

State law does not define
distribution of retaliatory tax
receipts

State law¹⁵ has not defined how retaliatory tax should be distributed which has led to inconsistency in its distribution and impacted potential distributions to the Fire Education Fund. A DIFP official said insurance company premium taxes (used in the Fire Education Fund distribution calculation) and retaliatory taxes are collected for the same purpose and would likely be distributed the same way. DIFP officials provide premium tax information and retaliatory tax information to the OA for calculation of the Fire Education Fund statutory funding and distribution of these taxes to schools and other funds.

¹² According to section 320.094, RSMo, beginning July 1, 1998, 3 percent of the amount of premium taxes collected in the immediately preceding fiscal year pursuant to sections 148.310 to 148.461, RSMo, which are deposited in the General Revenue Fund that exceeds the amount of premium taxes which were deposited in the General Revenue Fund in the 1997 fiscal year shall be transferred from the General Revenue Fund to the credit of the Fire Education Fund.

¹³ Section 320.111, RSMo.

¹⁴ SB 1196 Fiscal Note dated March 8, 2004.

¹⁵ Section 375.916, RSMo.

State law¹⁶ requires half of the premium insurance taxes be distributed to the school districts. The other half of the premium insurance taxes is distributed to the General Revenue Fund, of which a portion could be distributed to the Fire Education Fund based on a statutory funding formula. The Fire Education Fund calculation does not include retaliatory tax in the calculation, while the school distribution calculation includes both the premium tax and the retaliatory tax. State law¹⁷ for the Fire Education Fund distribution calculation does not specifically reference retaliatory tax and as a result, an OA staff said retaliatory tax revenues have not been included in the calculation. State law¹⁸ for retaliatory tax requires receipts of retaliatory tax to be made in the same manner as premium insurance tax and as a result, another OA official said retaliatory tax is distributed to schools in the same manner as premium insurance tax.

Schools received \$23.6 million from the retaliatory tax distributions for fiscal years 2006 and 2007. If retaliatory tax had been included in the Fire Education Fund for fiscal years 2006 and 2007 funding calculations, approximately \$43,000 would have transferred into the fund from the General Revenue Fund instead of the fund receiving nothing.

Fees charged are primarily less than other states reviewed

Missouri fireworks permit and license fees are primarily low in comparison to the 12 other states we compared Missouri's fees against. Table 2.2 shows the average or median fee assessed in the comparison group.

Table 2.2: Comparison of Missouri Fireworks Fees with Other States

Type of permit/license ²	Number of Permits/Licenses Issued in 2006	Current Permit/License Fee	Average or Median Fee	Percent Difference	Dollar Difference
Manufacturer	7	\$775	\$1,000	29	\$1,575
Distributor	50	775	950	23	8,750
Wholesaler	8	275	700	155	3,400
Seasonal Retailer	1,361	50	75	50	34,025
Displays	14	100	50	(50)	(700)
Proximate Displays	2	100	150	50	100
Operators ¹	83	100	125	25	2,075
Total	1,525				\$49,225

¹ Operators licenses are renewed every 3 years and as a result, the revenue generated is cyclical. The number of operator licenses issued in calendar year 2006 was less than calendar year 2005.

² Jobbers were not included in the comparison because the majority of other states did not have a jobber fee.

Source: SAO analysis of fireworks fees and permits issued in comparison to other state fireworks fees.

¹⁶ Section 148.350 -148.360, RSMo.

¹⁷ Section 320.094, RSMo.

¹⁸ Section 375.916, RSMo.

Penalties Rare for Noncompliance

DFS staff did not often revoke permits and licenses or report violators to local prosecuting attorneys. Over the last 3 years, officials reported one permit recipient not in compliance with state law to a local prosecutor, revoked one permit for illegal sale of fireworks and revoked three operator licenses. State regulations give DFS the authority to issue a written warning, revoke or suspend a permit after a written warning has been issued or the authority to refuse to renew or issue a permit if a violation occurs. State law¹⁹ allows DFS to call upon law enforcement officers for assistance in enforcing the fireworks law and regulations. State law establishes civil or criminal penalties for fireworks business owners operating without appropriate permits or noncompliance.²⁰

During the 2007 inspections, seven seasonal retailers had violations after an inspection and re-inspection with no penalty or sanction. One of the seven retailers operated without a permit during the fireworks season and did not submit a permit application until after the fireworks season ended. The business did not cease operating after the initial inspection or re-inspection as instructed by the DFS inspector. The permit application was dated the day after the re-inspection, but DFS did not receive it until after the fireworks season ended. A DFS official said the permit fee was accepted rather than reporting the business to the local prosecuting attorney for possible prosecution.

DFS officials said violations not pertaining to illegal fireworks²¹ are generally not submitted to the local prosecuting attorney because many types of violations would not be severe enough to warrant prosecution because the cost of enforcement exceeds the penalties. They also said inspectors will not revoke permits or licenses unless the violation results in imminent danger.

Limited Procedures to Identify Non-permitted Activities

DFS has established limited procedures to periodically search for non-permitted fireworks activities. State law requires a manufacturer, distributor, wholesaler, jobber, seasonal retailer, operator, and fireworks display be permitted prior to selling, offering for sale, shipping, or shooting display fireworks. A DFS official said DFS relies on consumer or competitor

¹⁹ Section 320.111, RSMo.

²⁰ Beginning in 2004, Section 320.111, RSMo, indicates any person who manufactures, sells, offers for sale, ships or causes to be shipped into the state for use in the state without the appropriate permit shall be assessed a civil penalty of up to a \$1,000 fine for each day of operation up to a maximum of \$10,000. Section 320.161, RSMo, indicates any person violating the fireworks law is guilty of a class A misdemeanor and any person in possession of, selling, or manufacturing illegal fireworks is guilty of a class C felony.

²¹ Section 320.136 defines illegal fireworks.

complaints, inspections performed by DFS during the fireworks season, or accident reports to identify non-permitted activities. This official said DFS does not have the resources necessary to proactively identify fireworks businesses, operators, or displays operating without a permit. The official also said the short seasonal timeframes impact the identification process.

Our review for non-permitted fireworks businesses identified at least 81 possible businesses in calendar years 2006 and 2007. We identified 36 displays or proximate fireworks displays in calendar year 2007 and 18 displays in calendar years 2005 and 2006 where a permit was not on file with DFS. Some of the displays may have been permitted by a local fire service authority; however, because only the permittee is required to notify DFS, we could not determine if the display had been properly permitted. We provided the results to a DFS official for review and analysis.

Online database beneficial in other states

Tennessee and Nebraska report state permitted fireworks businesses and/or operators to the local jurisdictions and the public on state Web sites. A fire safety official in Nebraska said these online records allow citizens and local governments to identify fireworks businesses that are not permitted. A DFS official said the division would consider creating an online database or listing of businesses or operators permitted by the state.

Conclusions

DFS has not received additional core budget funding for implementation of expanded fireworks law responsibilities in 2004 or other recent law changes including the state's private fire investigation program. Since 2004 statutory changes, fireworks permit and licensing fees have been deposited in the Fire Education Fund and have never been dedicated to program operations. The 2004 change occurred in part because the statutory formula for the Fire Education Fund funding had never resulted in a transfer to the fund. Increasing statutory responsibilities without authorizing additional resources may weaken an agency's ability to accomplish required tasks. Options exist for providing DFS funding for the fireworks program.

Fee revenue dedicated to the Fire Education Fund could be fully or partially redirected to fund division operations if state law was clarified as to how insurance company retaliatory tax is to be distributed. If retaliatory tax was distributed in the same manner as premium insurance, the Fire Education Fund would have received \$43,000 in fiscal years 2006 and 2007. In addition, Missouri fireworks permit and license fees are primarily lower than the fees in the 12 states we surveyed. Evaluation by the General Assembly of the funding formula for the Fire Education Fund and the permit and license fee rates is needed.

Sanctions or penalties for businesses or individuals not in compliance with the fireworks law or regulations are rarely enforced. If companies are not sanctioned or penalized for noncompliance, there is less incentive for them to comply with regulations.

DFS has established limited procedures to identify non-permitted businesses or events. We identified potential non-permitted fireworks businesses and displays with limited procedures. Other states have found disclosing permitted businesses or licensed operators on the Internet helps the public and local officials identify those businesses not in compliance. Ensuring all businesses and displays are permitted would increase fee revenue and help ensure public safety.

Recommendations

We recommend the Director of the Department of Public Safety:

- 2.1 Work with the General Assembly and OA to obtain funding for the fireworks program. Areas needing evaluation include fireworks permit and license fees going to the Fire Education Fund and current fireworks permit and license fee rates.
- 2.2 Revoke or suspend permits or licenses when violations identified are not corrected. Ensure vendors that fail to obtain proper permits after receiving warnings are reported to the local prosecuting attorney for possible penalty enforcement.
- 2.3 Establish procedures to identify fireworks businesses or individuals operating without a state permit or license. Take action to have these businesses permitted, licensed or sanctioned as appropriate.
- 2.4 Evaluate reporting permitted fireworks businesses and/or operators on the division's Web site.

We recommend the Commissioner of the Office of Administration:

- 2.5 Work with the General Assembly to clarify in Section 375.916, RSMo how retaliatory tax is to be distributed. Clarification should ensure consistent distribution.
- 2.6 Work with the General Assembly in evaluating the funding formula for the Fire Education Fund.

We recommend the General Assembly:

2.7 Evaluate (1) funding for the fireworks program, (2) the funding formula for the Fire Education Fund, and (3) fireworks permit and license fee rates.

2.8 Clarify in Section 375.916, RSMo, as to how retaliatory tax is to be distributed.

Agency Comments

Department of Public Safety Comments:

The Division of Fire Safety did not respond specifically to each recommendation. The division provided the following response:

The Division of Fire Safety Administration and Fire and Explosives Investigation Unit staff have reviewed the State Auditor's draft report of the Fireworks Licensing and Inspections Program. The Division has chosen to address the report per section, and respectfully submits the following response for clarification:

The report states: "During the 2007 inspections, seven seasonal retailers had violations after an inspection and re-inspection with no penalty or sanction."

Division of Fire Safety personnel inspected over 684 seasonal retailers during the 10-business day period for these retailers. It is a remarkable fact that only one percent of the retailers inspected still had violations after a re-inspection. In the past, local prosecutors have declined to file misdemeanor charges for any violations of the fireworks regulations, particularly after the retail season had ended.

The report states: "Establish procedures to identify fireworks businesses or individuals operating without a state permit or license."

Since the implementation of the Fireworks program the Division of Fire Safety has had a procedure for identifying fireworks businesses without a state permit. During the 10-business days of the retail season, Division personnel conducting inspections take a proactive approach to discover unlicensed retailers. When they observe any fireworks retailers that are not listed on their inspection list, personnel always then stop at those locations. They conduct an initial inspection and advise the retailers to cease immediately selling fireworks without obtaining a permit. To date, every such unlicensed retailer that has been located has obtained the proper permits.

This includes one unlicensed retailer whose application and payment arrived after the season ended. This individual was advised to cease selling fireworks when it was first discovered he had no permit. The individual immediately ceased selling before the inspector left the area. When the Division inspector returned to the retailer, it was then discovered that the individual was again selling fireworks. He again was advised to stop selling fireworks and obtain the proper permit. The individual immediately ceased selling before the inspector left the area. It was not possible or fiscally responsible for the inspector to monitor this one location constantly to determine if sales began again. It was also not considered fiscally responsible to expend further Division resources for an unfunded program to pursue prosecution after the retail season had ended and the individual had paid for the proper permit.

SAO Comment:

The recommendation is referring to establishing formal procedures using sales tax records and information searches to identify businesses or displays not permitted.

The need to pursue appropriate legal action is reflected in the comments provided about the unlicensed seasonal retailer. The vendor violated the first shut down order knowing there was little or no consequence for him resuming his fireworks sales. By not pursuing legal action when appropriate, there is less incentive for vendors to comply with requirements. It is not clear what financial cost the division would incur when referring violators to local prosecutors.

In summary, the Division of Fire Safety staff would like to take this opportunity to thank the audit team for their professional review of the Fireworks licensing and Inspection Program. We fully intend to continue to provide our state with excellence in service and to implement whatever changes are within our power which will move the program into a positive direction for all involved.

Office of Administration Comments:

2.5 The Office of Administration is willing to work with the General Assembly and provide information and analysis necessary to clarify and evaluate the funding formula.

2.6 The Office of Administration is willing to work with the General Assembly and provide information and analysis necessary to clarify and evaluate the funding formula.

Improved Procedures and Changes to State Law and Regulations Needed

Improvements to the state's inspection, permitting and licensing processes and changes to state law and regulations are needed. This situation has occurred because (1) DFS does not perform inspections on a risk and/or rotational basis, (2) state law allows local jurisdictions to set minimum compliance standards that are different than DFS standards, (3) licensing procedures have not ensured operators meet compliance requirements, (4) display and proximate fireworks display regulations lack key guidance requirements, (5) applications lack some information needed to determine eligibility, and (6) state law does not include some requirements other states have found beneficial for their fireworks programs. As a result, the public safety could be compromised and permits or licenses may be issued inappropriately.

Inspection Process Needs Improvement

Inspections performed are not based on a risk basis or rotational cycle. State law²² grants the State Fire Marshal and the marshal's deputies the authority to conduct inspections of any premises and all portions of buildings where fireworks are stored, manufactured, kept or being offered for sale. DFS officials said state law does not require DFS to perform any inspections. However, they said each year, the division's fire safety inspectors and investigators are provided a list of permitted fireworks businesses in their area for possible inspection.

Seasonal retailers often not inspected

DFS performed 392 and 684 inspections of seasonal retailers in 2006 and 2007, respectively, of more than 1,300 permitted retailers in each year. Table 3.1 shows 80 percent of the cities in calendar years 2005²³ and 2006 and 63 percent of the cities in calendar years 2005, 2006, and 2007 had one or no seasonal retailers inspected.

Table 3.1: Cities with One or No Seasonal Retail Inspections Performed by DFS

Period Reviewed	Total Cities with 1 or More Permits Issued	Percent of Cities with 1 or No Inspections Performed
2 years ended 2006	527	80
3 years ended 2007	550	63

Source: SAO analysis of DFS' records.

Of the cities with ten or more permitted locations in 2005 and 2006, approximately 39 percent had one or no inspections performed in the 2 year period. Some of the larger cities with no inspections included St. Charles, St. Joseph, Blue Springs, Jefferson City, and Maryville. Of the cities with 10

²² Section 320.111, RSMo.

²³ For 2005, DFS reported 210 inspections but the database only listed 143 inspections.

or more permitted locations in 2005, 2006, and 2007, approximately 16 percent had one or no inspections performed in the 3 year period. Some of the cities with one or no inspections included Maryville, West Alton, Kennett, Reeds Spring, Fair Grove, Parkville, and Buffalo. During our observation of a seasonal retail inspection in Jefferson City, the store manager questioned some of the violations noted and asked if the law had changed. The site had not been inspected by DFS since at least 2004. DFS officials said the division relies on inspections performed in some local jurisdictions; however, they said DFS does not perform a review to identify which requirements in the fire code standards are evaluated by the local jurisdiction during an inspection and, as discussed further on page 21, local jurisdictions can establish less strict compliance requirements than those established by DFS.

Many of the same retail locations are inspected annually. For 2007, 160 of 684 (23 percent) inspections covered retailers inspected in 2006, but 318 retailers received no inspection in both years. In addition 220 of the 501 (44 percent) newly permitted retailers in 2007 received no inspection. DFS officials said inspections are performed when the inspectors are able to dedicate their time to performing the inspections. DFS officials said the inspectors are not dedicated to the fireworks program since the program is not funded, so fire investigations take priority over fireworks inspections and the businesses inspected are normally dependent on where the inspector is located when performing normal job duties.

**Inspections of distributors,
jobbers and wholesalers
limited**

Inspections of distributors, jobbers, and wholesalers are not frequently performed. DFS randomly performs inspections of jobbers, distributors, and wholesalers during the fireworks season or when a complaint is received. However, these fireworks businesses are open year round. DFS has not established any policies or procedures for performing inspections of these businesses during non-seasonal timeframes nor are there specific procedures to ensure inspections of these businesses are performed on a risk or rotational basis. A DFS official said the regulations do not identify specific inspection requirements for manufacturers, distributors, wholesalers, and jobbers as the regulations only indicate general and retail sales inspection criteria. They said inspections of these businesses are performed primarily using the seasonal retailer criteria.

To evaluate inspections of jobbers, wholesalers, and distributors, we summarized the inspections performed in calendar years 2006 and 2007 by type of permit. Table 3.2 identifies a low percentage of permitted jobbers, distributors, and wholesalers were inspected in both calendar years 2006 and 2007 as of August 2, 2007.

Table 3.2: Percentage of Permitted Businesses Without an Inspection

Type of Permit	Percentage of Businesses with No Inspection in 2006	Percentage of Businesses with No Inspection in 2007 as of August 2, 2007
Jobber	91	88
Distributor ¹	96	92
Wholesaler	75	70

¹ A DFS official said ATF licenses distributors selling display fireworks. This official said DFS relies upon ATF to perform inspections of federally licensed distributors. The permit database does not indicate whether a distributor is federally licensed. As a result, the percentage of businesses with no inspections may be higher than actual.

Source: SAO analysis of DFS permit databases.

Re-inspections are not always performed

DFS has not established procedures to ensure permitted businesses with inspection violations are re-inspected. A DFS official said inspectors prioritize re-inspections based on their work schedule and the division planned to make re-inspections a priority beginning in calendar year 2007. For 2007, records show 151 of the 299 (51 percent) businesses with inspection violations did not have a re-inspection. DFS officials said lack of funding and lack of time during the seasonal timeframe for the fireworks program reduces the time available for inspectors to perform re-inspections of businesses.

Fireworks businesses operating in a permanent structure are not required to be in compliance with fire code standards

State law and regulations do not require fireworks businesses operating in a permanent structure to be in compliance with nationally recognized fire codes. National Fire Protection Association (NFPA)²⁴ 101 Life Safety Code and other nationally recognized fire codes identify appropriate occupancy levels, means of egress, fire alarm requirements and other necessary safety standards in case of a fire. Currently, the state does not have statewide fire codes for any permanent building structure. According to DFS officials, local jurisdictions have the responsibility to establish their own fire code standards. They also said while the fireworks state law²⁵ and regulations require manufacturers, distributors, wholesalers, and jobbers to be in compliance with all applicable building and fire regulations in the city or county, the city or county may not have established any building and fire regulations.

²⁴ The National Fire Protection Association (NFPA) provides standards that outline recommendations for the manufacture, storage, transportation and execution of fireworks as well as life safety guidelines.

²⁵ Section 320.111, RSMo.

Since state regulation does not require the fireworks businesses operating in a permanent structure be in compliance with nationally recognized standards, a DFS official said DFS does not perform any review of these existing businesses to ensure they are operating in accordance with national standards. This official said two plan reviews have been performed within the last year using NFPA 101 standards for wholesalers and jobbers located in new permanent buildings; however, since the regulations do not require these businesses to comply with NFPA standards DFS cannot enforce any requirements without a regulation being established. A DFS official said DFS is planning on revising state regulations to include requirements for fireworks permanent structures. The official said it would be a benefit to the fireworks businesses to be in compliance with national fire code standards as such compliance could potentially reduce insurance costs associated with operating a permanent building structure.

Different Compliance Standards for Local Jurisdictions

State law is inconsistent as local jurisdictions²⁶ are not required to comply with the same fireworks requirements as DFS.

Display and proximate fireworks display standards

State law allows local jurisdictions to establish different display and proximate fireworks display compliance standards²⁷ which may not be consistent with standards established by DFS. State law²⁸ allows either DFS or local fire service authorities to grant a permit for display or proximate fireworks. State law²⁹ lists specific requirements to obtain display or proximate permits. In addition, state law has specific requirements during a fireworks display presentation. Some of these requirements include:

- Applicants must submit \$100 to be deposited to the Fire Education Fund.
- Application shall be on a form provided or approved by the State Fire Marshal.
- Applicant shall furnish proof of financial responsibility in an amount established by promulgated rule to the permitting authority.³⁰

²⁶ Local jurisdiction includes any city, town, village, or any county operating under a charter form of government in the state.

²⁷ Section 320.121, RSMo.

²⁸ Section 320.126, RSMo.

²⁹ Section 320.111, RSMo and Section 320.126, RSMo.

³⁰ 11 CSR 40-3 requires proof of insurance coverage of not less than \$1 million.

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- The display shall be supervised, managed, or directed by a licensed operator.
 - The display shall be inspected for public safety based on the most current edition of NFPA standards 1123, 1124, and 1126.³¹
 - Any establishment where proximate fireworks are to be discharged shall be inspected for compliance with NFPA 101 Life Safety Code or other nationally recognized code in relation to means of egress, occupancy load, automatic sprinkler and fire alarm systems.

We contacted three local jurisdictions (Springfield, Branson, and Holts Summit) responsible for permitting and inspecting display or proximate fireworks. We determined the standards established by the local jurisdictions did not meet the standards established by DFS. Examples of weaknesses or differences identified include:

- A Springfield fire safety official said the city does not currently have an inspection form for use during an inspection but the official said inspectors will use the inspection form developed by DFS beginning in 2008.
- According to the Branson display permit, the city only requires \$500,000 in liability insurance.

Seasonal retailer standards

State law allows local jurisdictions to establish different seasonal retail compliance standards³² which may not be consistent with DFS standards. Although DFS is responsible for permitting and inspecting fireworks seasonal retailers, certain local jurisdictions also permit and perform inspections of the seasonal retailers located within their jurisdiction. The inspections performed by the local jurisdictions may not necessarily meet the standards required by DFS.

DFS officials said due to limited staff and inability to inspect each seasonal retailer annually, DFS relies upon the local jurisdictions in certain instances to perform inspections, such as Jefferson City, St. Joseph, Blue Springs, City of Eureka and Grain Valley. A DFS official said DFS ensures the local

³¹ NFPA 1123 documents the Code for Fireworks Displays. NFPA 1124 documents the Code for the Manufacturing, Transportation, Storage and Retail Sale of Fireworks and Pyrotechnic Articles. NFPA 1126 documents the Standards for the Use of Pyrotechnics Before a Proximate Audience.

³² Section 320.121, RSMo.

jurisdictions perform inspections that meet certain fire code standards; however, a review is not performed to identify which requirements in the code are evaluated. During our observation of two DFS fireworks seasonal retailer inspections in Jefferson City, DFS identified many violations for each of the retailers. We compared the violations noted by DFS to the violations noted by the Jefferson City inspectors and determined Jefferson City inspections evaluate fewer specific compliance standards than DFS.

Operator Licensing Needs Improvement

Operators performing a display or proximate fireworks display in the state must obtain a federal license, if applicable, from the ATF and a state license from the DFS. Analysis of the division's licensing processes identified (1) validation of a federal license had been obtained prior to state licensing did not always occur, (2) state law needs to be clarified to allow DFS to perform complete background checks, and (3) some state regulations need clarification.

Federal licenses are not appropriately validated

State regulations³³ require operator applicants to submit a copy of their ATF license or permit, if applicable, prior to a state operator license being issued to an applicant. However, DFS staff have not been verifying all federal licenses or permits prior to licensing operators in the state. During our review, we found state licensed operators who do not possess a federal license or permit. To determine if state licensed operators possessed a federal license or permit, we matched records from the operator license database to records from ATF based on name. We identified approximately 364 operators who potentially did not possess a federal license or permit.

We reviewed 16 of these 364 operators with ATF and DFS officials to evaluate the operator's federal licensing status. DFS staff and ATF officials confirmed 12 of the 16 were currently not federally licensed or permitted and should have had a federal permit. DFS staff analysis showed the division:

- Could not provide documentation supporting nine operators were federally licensed at the time DFS licensed them. According to a DFS official, the job responsibility or employer of these individuals would require the operator to be federally licensed.
- Had documentation to support three operators were federally licensed or permitted at the time DFS licensed the operator; however, the federal license or permit expired and had not been renewed but the state license remained valid.

³³ 11 CSR 40-3 (9)(B)5.F.

A DFS official said prior DFS program management did not require a copy of the ATF responsible person or employee possessor permit if the employer validated the individual worked for the business. A DFS official said DFS began requiring a copy of the federal permit prior to licensing an applicant within the last year. A DFS official also said certain operators will begin the license renewal process in 2007.

Background checks of operators not done at the state level

State regulations require applicants for an operator license to not have a felony conviction or have pleaded guilty to a felony. However, state law does not give DFS clear authority to perform fingerprint background checks of operators.

DFS officials said background checks have not been performed because state law does not mandate the division perform background checks nor has the division received funding to perform background checks. A MSHP official said state law³⁴ gives state agencies the authority to obtain fingerprint background checks for licensing purposes; however, the official said the law would need to be updated to give DFS specific authority to obtain background checks. As a result, DFS is unable to conduct fingerprint background checks under state law.

DFS officials also said the division relies on ATF's background check screening in the federal licensing and permitting process and, as such, additional state checks would be unnecessary. An ATF official said some federally permitted operators³⁵ do not receive a fingerprint background check and a MSHP official said a criminal history background check of the state's records is not part of the federal background check. At least 200 of the 768 (26 percent) state licensed operators would not have had federal background checks and none of the licensed operators would have had a state background check.

Open record background checks

Even without clear authority to obtain fingerprint background checks, DFS currently has the authority to obtain open record checks. A DFS official said DFS had not obtained such checks on operators because the division was not aware of this authority and there was no funding for the checks. To evaluate if any licensed operators had been convicted or pleaded guilty to a felony, we submitted records from the DFS operator license database to the MSHP for an open records check. The analysis identified three licensed operators who were found guilty or pleaded guilty to a felony and three licensed operators who have a pending felony charge. For the three

³⁴ Section 43.543, RSMo.

³⁵ Employee possessor permits.

	operators with felony convictions, the verdict or plea occurred after DFS issued their license.
Regulations need to be updated	State regulations do not require operators to attend a training course within a certain period of time before the issuance of the initial license nor is there a minimum number of training hours required for the initial license issued by DFS. A DFS official said the informal procedure documented in training application material is for the applicant to have completed training within one year before the application request.
Display and Proximate Fireworks Display Requirements Need Improvement	Beginning in 2004, state law required an inspection to be performed of displays and proximate fireworks displays using the most current edition of NFPA 1123, 1124 and 1126. Display and proximate fireworks display requirements are identified per the regulations. However, certain requirements cited by the NFPA are not required per regulations. A DFS official said not all items are required to be validated by DFS because the operator is already required under state law to be in compliance with the NFPA standards when performing a display.
Regulations changes needed	DFS has incorporated compliance requirements from the NFPA standards in its fireworks regulations, such as detailed site plans and records of pyrotechnic material to be used. During our review of NFPA standards, we identified other issues not addressed or insufficiently addressed in the regulations: <ul style="list-style-type: none"> • Emergency procedures • Detailed site plans • Termination procedures
Emergency procedures should be documented	Regulations do not require applicants to develop or document emergency procedures for a display. NFPA recommends applicants prepare the actions to be taken in the event of an accident, such as notifying emergency forces and notifying the operator to terminate firing in the event a hazard arises. The plan should be submitted to the area having jurisdiction for approval.
Detailed site plan need more information	Regulations require applicants to provide a detailed site plan. However, regulations do not require the site plan to be to scale or to include necessary information recommended by the NFPA, such as the location of fireworks storage areas, traffic plans, location of emergency vehicles, and location of significant roadways.
Termination procedures not required	Regulations do not require applicants to develop termination procedures for a display. NFPA recommends applicants prepare a description of the actions

to be taken upon completion of the display and submitted to the area having jurisdiction for approval.

Permit Applications Missing Information

Permit applications do not request some information needed. We identified the following areas where more information needs to be requested to determine eligibility:

- Regulations require display distributors, if applicable, to have obtained a federal permit. However, the distributor application does not request applicants to identify if they sell display fireworks. The current application only requests applicants to identify if they conduct pyrotechnic displays. As a result, DFS cannot ensure all applicants obtained the required federal licenses prior to DFS permitting the applicant. A DFS official said the 2008 application form was updated to ask for this specific information.
- State law requires wholesaler, jobber and seasonal retailer applicants to be at least 18 years old. Regulations require manufacturer, distributor applicants to be at least 21 years old. However, DFS does not request the applicants age per the application nor perform any procedures to validate the applicants meet the minimum age standards. A DFS official said they rely upon ATF to validate the age of the manufacturer and distributor applicants. However, ATF is not responsible for validating the age of wholesaler, jobber, seasonal retailer, or non-federally licensed distributor applicants.

Other Law Changes

We identified laws in other states that may be beneficial if enacted in Missouri. To ensure financial responsibility of fireworks businesses and to assist in identifying illegal fireworks sales, other states have established laws or regulations addressing these issues.

Proof of financial responsibility

State law or regulations do not require manufacturers, distributors, wholesalers, jobbers, or seasonal retailers operating in a permanent structure to furnish proof of financial responsibility in order to satisfy claims for damages to property or personal injuries arising out of any act or omission. An Arkansas official said Arkansas requires fireworks distributors, jobbers, and wholesalers to furnish proof of financial responsibility. A Georgia official said Georgia also requires fireworks manufacturers to furnish proof of financial responsibility to ensure the business would have coverage if an accident occurred. A DFS official said financial responsibility for these businesses has not been required since it is not mandated by law or regulation.

Access to fireworks business financial records

The fireworks state law or regulations do not require fireworks manufacturers, distributors, wholesalers or jobbers to maintain accurate records of sale, shipment or purchases or allow the State Fire Marshal access to these records. State law in Alabama, Arkansas, and Tennessee require certain permit holders to maintain a record of each sale, delivery or out shipment of fireworks showing the name and address of the seller or purchaser, item and quantity received or sold. The records shall be maintained at the place of business for the current and immediately preceding calendar year and are subject to examination by the State Fire Marshal or his deputies. Nebraska requires any person licensed to keep available for inspection a copy of each invoice for fireworks purchased as long as any fireworks included on such invoice are held in possession. The Nebraska fire safety official said the inspectors review the invoices to identify any fireworks illegally purchased.

Conclusions

DFS staffing limitations and the short seasonal timeframe prevent seasonal retailers from being inspected annually, but DFS has not established procedures to inspect these retailers on a risk or rotational basis that would target new retailers or those with past compliance problems. Distributors, jobbers, and wholesalers are inspected infrequently and DFS has not established any specific inspection procedures for these businesses. Re-inspection of facilities with violations are not always performed. In 2007, DFS limited re-inspection to half of the facilities with identified violations.

State law and regulations do not require fireworks businesses, excluding seasonal retailers, operating in a permanent structure to be in compliance with nationally recognized fire codes. A regulation in this area would help ensure uniform standards statewide and benefit public safety.

State law allows local jurisdictions to establish safety standards for displays, proximate fireworks displays and fireworks businesses that differ from DFS standards. Public safety may be harmed due to weaker local safety standards.

Fireworks operators must be federally licensed, if applicable, prior to obtaining a state operator license. Procedures performed have not ensured (1) applicable operators have federal licenses or permits and (2) if licensed, those licenses remained active or were renewed through the end of the state license period. Incomplete state law limits the division's ability to perform complete background checks. State regulations need clarification on the timing of training prior to licensure.

State regulations covering display and proximate fireworks display compliance requirements do not include key items outlined in NFPA 1123,

1124, and 1126. State law requires inspections to be performed under these rules. Insufficient information requested on permit applications limits division staff's ability to ensure applicants meet all eligibility requirements.

Implementation of fireworks law or requirements similar to those in other states regarding financial responsibility and granting DFS personnel access to sale, shipping and purchase records may be beneficial in Missouri.

Recommendations

We recommend the Director of the Department of Public Safety:

- 3.1 Establish policies and procedures for fireworks inspection activities that include:
 - Performing inspections and re-inspections on a risk basis, emphasizing new businesses and businesses with prior violations.
 - Establishing inspection procedures for jobbers, wholesalers and distributors.
 - Ensuring each business is inspected periodically.
 - Evaluating inspection procedures performed by local jurisdictions that the division places reliance on due to staffing limitations.
- 3.2 Establish regulations requiring fireworks businesses operating in a permanent structure to comply with nationally recognized fire codes and inspect the businesses periodically.
- 3.3 Work with the General Assembly to revise state law to ensure consistent fireworks standards are implemented on a statewide basis.
- 3.4 Establish policies and procedures for operator licensing that:
 - Verify federal permits are valid prior to issuance of the state license.
 - Track license recipients whose federal license expires before the state license and take action as necessary to evaluate if the federal license was renewed.
 - Include obtaining background checks of operators as funding is available.
- 3.5 Work with the General Assembly to clarify DFS has the authority to obtain fingerprint background check results as part of the operator licensing process and ensure adequate funding is available for these background checks.
- 3.6 Clarify in state regulations the timing and number of training hours needed prior to licensure for operators.

3.7 Update display and proximate fireworks display regulations to include NFPA guidelines covering (1) emergency procedures, (2) more detailed site plans and (3) termination procedures.

3.8 Update applications for sale and age information and verify as necessary the applicant meets eligibility compliance requirements.

3.9 Work with the General Assembly in evaluating fireworks law changes, requiring businesses show proof of financial responsibility and giving DFS access to financial records.

We recommend the General Assembly:

3.10 Revise state law to ensure consistent fireworks standards are implemented on a statewide basis.

3.11 Revise state law to clarify DFS has authority to obtain fingerprint background check results as part of the operator licensing process. Ensure adequate funding is available to support background checks.

3.12 Consider requiring fireworks businesses show proof of financial responsibility and give DFS access to financial records in state law.

Agency Comments

Department of Public Safety Comments:

The Division of Fire Safety did not respond specifically to each recommendation. The division provided the following response:

The Division of Fire Safety Administration and Fire and Explosives Investigation Unit staff have reviewed the State Auditor's draft report of the Fireworks Licensing and Inspections Program. The Division has chosen to address the report per section, and respectfully submits the following response for clarification:

The report states: "Some of the larger cities with no inspections included St. Charles, St. Joseph, Blue Springs, Jefferson City, and Maryville."

All of these cities conducted fire safety inspections of the seasonal retailers located within their own jurisdictions. The Division determined that it was in the best interest of public safety to concentrate its inspections where there were no local authorities conducting inspections rather than duplicate local efforts and further limit the number of inspections possible during the limited retail season. Furthermore, it was not considered fiscally

responsible to conduct duplicate inspections where local officials were conducting inspections for compliance with the International Fire Code.

SAO Comment:

We are not suggesting DFS duplicate the work performed by local officials, but if DFS intends to rely on the local inspections in lieu of those performed by DFS, then procedures need to be established to evaluate the inspection procedures and issues identified by the local officials. As the Jefferson City inspections discussed in the report point out, local official inspections do not always cover the same compliance issues covered by DFS inspections.

The report states: “Many of the same retail locations are inspected annually.”

One of the undeniable elements of every fire inspection program is that there is no possible way that every facility inspected will remain in compliance after an inspector leaves the premises. Thus, it is just as important to inspect previously licensed retailers, as it is to inspect newly licensed retailers. In many cases, newly licensed retailers may be more likely to be in compliance having just received the regulations for the first time. Division of Fire Safety personnel inspected double the number of seasonal retailers inspected in 2007 as in any previous year. These inspections were conducted with the Division’s limited resources and in addition to their mandated duties.

SAO Comment:

As recommendation 3.1 states, we are not saying established retailers do not need inspections. Each retailer needs an inspection on a periodic basis with higher risk businesses (new retailers and those with prior compliance problems) needing to be prioritized.

The report states: “For 2007, records show 151 of the 299 (51 percent) businesses with inspection violations did not have a re-inspection.”

During the 10-business days of the 2007 retail sales season, Division personnel conducted over 684 inspections of permitted seasonal retailers. One-hundred and fifty-one businesses without a re-inspection, equates to only 22 percent of those inspections which did not have a re-inspection. The limited time available, as some of the businesses closed at the end of the season, makes a re-inspection nearly impossible. Personnel inspected 51 percent of permitted seasonal retailers in addition to the other mandated duties.

SAO Comment:

The 22 percent cited by DFS is not relevant because businesses without violations would not need a re-inspection. Businesses with known compliance problems would present a higher risk to public safety.

The report states: “State law allows local jurisdictions to establish different display and proximate fireworks display compliance standards which may not be consistent with standards established by DFS.”

RSMo 320.126 states: “Every such display shall be supervised, managed, or directed by a Missouri licensed operator, or pyrotechnic operator on site pursuant to subdivisions (11) and (18) of section 320.106 and shall be located, discharged, or fired so as in the opinion of the permitting authority, after proper inspection based on the most current edition of the National Fire Protection Association standards, NFPA 1123, 1124, and 1126, to not be hazardous to any person or property.” Under this statute, local jurisdictions are required to inspect fireworks displays to comply with the most current editions of NFPA 1123, 1124, and 1126. Thus, local jurisdictions must follow the same requirements as DFS for public displays. The Division has no authority to ensure that local jurisdictions are complying with this statute.*

SAO Comment:

The purpose of the recommendation is to alert the General Assembly that public safety may be compromised due to local jurisdictions establishing less strict compliance standards.

The report states: “State law allows local jurisdictions to establish different seasonal retail compliance standards which may not be consistent with DFS standards.”

Since state law allows this, the Division cannot establish any regulations to the contrary. Additionally, the majority of local jurisdictions in the state doing code enforcement have adopted the International Fire Code.

SAO Comment:

The audit is not saying the division needs to establish regulations contrary to state law. It says work with the General Assembly on establishing consistent statewide fireworks safety standards in state law. Although certain local jurisdictions have adopted the International Fire Code, this does not necessarily ensure the same procedures and criteria are evaluated when local jurisdiction inspections occur.

The report states: “During our review, we found state licensed operators who did not possess a federal license or permit. To determine if state licensed operators possessed a license or permit, we matched records from the operator license database to records from ATF based on name. We identified approximately 364 operators who potentially did not possess a federal license or permit.”

The Division licenses several individuals as operators who are employed by government entities and only perform displays for those government entities. Neither these individuals nor the government entities are required to have a federal license.

During the initial stages of the operator-licensing program, several individuals were licensed based on verification from licensed fireworks companies that those persons were on the companies’ federal license. Of those initially licensed operators, the DFS operator licenses of 131 individuals have expired and have not been renewed.

An ATF Specialist of the Federal Explosive Licensing Center advised DFS in 2007 that ATF was approximately six months behind in processing applicants for licenses and permits. Thus, individuals may have applied for federal licensing but not officially listed on a company license as a user/possessor. Federal regulations only require that a company license holder report new responsible people/employee possessors within 30 days to ATF. The Specialist said that those new individuals are then covered by the license until their applications are processed. Based on this information, DFS issued licenses to individuals after receiving copies of their federal applications, although ATF had not yet placed their names on an official license.

Since July 2006, DFS has required hard copies of federal permits before licensing display operator applicants. Additionally, 581 operators must renew their licenses in 2008. During this process, all individuals must supply the Division with a copy of their current federal license.

The report states: “DFS staff analysis showed...Had documentation to support three operators were federally licensed or permitted at the time DFS licensed the operator; however, the federal license or permit expired and had not been renewed but the state license remained valid.”

DFS regulations only require a copy of an ATF license or permit, if required, when applying for a state license or permit. The Division of Fire Safety will explore a process for identifying expired ATF licenses and/or a revocation process.

The report states: "The analysis identified three licensed operators who were found guilty or pleaded guilty to a felony and three licensed operators who have a pending felony charge. For the three operators, the guilty verdict or plea occurred after DFS issued their license."

State regulations state that an "Applicant shall not have a felony conviction or have pleaded guilty to a felony." However, current DFS regulations do not allow DFS to revoke a license or permit if a felony conviction or guilty plea occurs during the license period. Therefore, regardless of a conviction or guilty plea, DFS cannot take any action concerning the licenses of those individuals identified by the Auditor's Office. If an individual either has a conviction or guilty plea or fails to provide that information, that person's license would not be renewed by the Division at the end of the person's licensing period. The operator's license of one of the individuals identified with a conviction expired in September 2007 and was not renewed by DFS. Additionally, the Division of Fire Safety will explore a process for identifying operators who have been convicted of a felony and/or a revocation process.

The report states: "State regulations do not require operators to attend a training course within a certain period of time before the issuance of the initial license..."

The DFS Display and Proximate Fireworks Licensing booklet provided to the Auditor's Office states: "If an applicant has not tested, taken a retest, or completed the licensing process within one year of course completion, his or her testing records will be deemed inactive and the entire course must be taken again to be eligible to test." Thus, if an applicant has not tested or not been licensed within one year of course completion, that applicant must take the entire course again to be eligible to test. This sets a one-year limit for licensing within a year of taking a course. Furthermore, regulations state: "To obtain recertification, the applicant shall be required to meet the following criteria: A. Provide documentation that applicant has attended a minimum of twelve (12) hours of continuing education relating to pyrotechnics within the past three (3) years."

SAO Comment:

The audit is recommending the cited time period be formalized in state regulation.

Under the section entitled "Display and Proximate Fireworks Display Requirements Need Improvement," the report states: "However, certain requirements cited by NFPA are not required per regulations."

As previously stated above, RSMo 320.126 states: “Every such display shall be supervised, managed, or directed by a Missouri licensed operator, or pyrotechnic operator on site pursuant to subdivisions (11) and (18) of section 320.106 and shall be located, discharged, or fired so as in the opinion of the permitting authority, after proper inspection based on the most current edition of the National Fire Protection Association standards, NFPA 1123, 1124, and 1126, to not be hazardous to any person or property.”*

To avoid the redundancy and confusion, the regulations do not repeat these requirements since this statute requires inspections be based on the most current NFPA editions. Therefore, the “issues not addressed or insufficiently addressed in the regulations” are addressed thoroughly in the NFPA standards which are mandated by statute and incorporated by reference into the regulations. It would be pointless to further elaborate on only the three items listed in the report that are adequately covered in the NFPA standards.

SAO Comment:

Regulations cite some specific parts of these NFPA standards. The purpose of the recommendation is to point out there are other key issues in the NFPA standards not cited in regulations.

The report states: “Regulations require display distributors to have obtained a federal permit. However, the distributor application does not request the applicant to identify if they sell display fireworks.”

The regulations under the section “Applications for Permit: Manufacturer, Distributor, Wholesaler, Jobber, Seasonal Retail.” only require a copy of a federal permit if applicable. If a “distributor” deals in only 1.4G fireworks, that distributor would not be required to have a federal permit, thus making it impossible to obtain a copy of a permit. The application used for any manufacturer, distributor, wholesaler, jobber, seasonal retailer previously contained the statement: “Does your business conduct fireworks displays.” This statement was modified in July 2007 to read, “Does your business sell display fireworks as defined in chapter 320 RSMo.”

In summary, the Division of Fire Safety staff would like to take this opportunity to thank the audit team for their professional review of the Fireworks licensing and Inspection Program. We fully intend to continue to provide our state with excellence in service and to implement whatever changes are within our power which will move the program into a positive direction for all involved.