

# ***NEW YORK STATE OFFICE OF THE STATE COMPTROLLER***

---

**H. Carl McCall  
STATE COMPTROLLER**



***DEPARTMENT OF AGRICULTURE AND  
MARKETS***

***WEIGHTS AND MEASURES PROGRAM***

***2000-S-24***

---

**DIVISION OF MANAGEMENT AUDIT AND  
STATE FINANCIAL SERVICES**

OSC Management Audit reports can be accessed via the OSC Web Page:

<http://www.osc.state.ny.us>

If you wish your name to be deleted from our mailing list or if your address has  
changed,

contact the Management Audit Group at (518) 474-3271

or at the

Office of the State Comptroller

Alfred E. Smith State Office Building

13<sup>th</sup> Floor

Albany, NY 12236



**H. Carl McCall**  
**STATE COMPTROLLER**

**Report 2000-S-24**

Mr. Nathan L. Rudgers  
Commissioner  
Department of Agriculture and Markets  
1 Winners Circle  
Albany, NY 12235

Dear Mr. Rudgers:

The following is our audit report addressing the Department of Agriculture and Markets' Weights and Measures Program.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. We list major contributors to this audit report in Appendix A.

*Office of the State Comptroller*  
*Division of Management Audit*  
*and State Financial Services*

January 16, 2002

---

***Division of Management Audit and State Financial Services***

A.E. SMITH STATE OFFICE BUILDING ♦ ALBANY, NEW YORK 12236  
123 WILLIAM STREET ♦ NEW YORK, NEW YORK 10038

---

---

# **EXECUTIVE SUMMARY**

## **DEPARTMENT OF AGRICULTURE AND MARKETS WEIGHTS AND MEASURES PROGRAM**

---

---

### **SCOPE OF AUDIT**

**A**ccording to State law, all devices used to weigh and measure commodities sold on the basis of their weight, volume or size (such as delicatessen scales, gas pumps and taximeters) must be inspected and tested for accuracy at least once a year. In addition, packaged commodities such as foods, cleaning agents, and yard and garden products are subject to inspection to ensure that the packages contain the amount indicated on the label. Furthermore, gasoline and diesel fuels sold for use in motor vehicles are subject to inspection to ensure that the fuels meet certain quality standards and are properly labeled for sale. These various inspections are performed through the Weights and Measures Program administered by the Department of Agriculture and Markets. Certain types of inspections are performed by the Department's Bureau of Weights and Measures (Bureau), while other types are performed by 64 municipalities (57 counties and seven cities) under the supervision of the Bureau.

Our audit addressed the following questions about the Weights and Measures Program for the period July 1, 1998 through December 31, 2000:

- Did the Bureau effectively monitor the inspections performed by the municipalities?
- Was the Bureau effective in the inspections it performed?

---

---

### **AUDIT OBSERVATIONS AND CONCLUSIONS**

**W**e identified gaps in the inspection coverage provided by the Weights and Measures Program, as inspection requirements are not met in some municipalities and Bureau inspections are not always administered effectively. We recommend that the Bureau monitor the municipalities more closely, consider developing performance standards for inspections, and make certain improvements in its own inspection procedures and practices. In addition, a manual process is used by the Bureau to obtain annual report information about the inspections performed by the municipalities. We determined that this process would be improved if an electronic reporting system was developed.

The municipalities are responsible for inspecting a total of more than 84,000 weighing/measuring devices. We found that, according to information reported to the Bureau by the municipalities, most of the municipalities inspect most of the devices in their jurisdiction at least once a year, as required by law. However, some municipalities fail to inspect a significant portion of the devices in their jurisdiction at least once a year. For example, ten municipalities reported that, in 1999, more than 20 percent of the devices in their jurisdiction were not inspected. The Bureau's staff of field specialists work with municipal inspectors throughout the year and are aware of the problems they encounter. However, the Bureau does not keep records on the number of inspections performed by municipal inspectors during the year. When annual reports are submitted, Bureau officials do not follow up on the information reported by the municipalities to identify the reasons inspections were not done, and to determine what actions can be taken to improve inspection coverage. We recommend that the Bureau routinely follow up with the municipalities in this way. (See pp. 5-8)

The municipalities are responsible for performing inspections of packaged commodities. In addition, Municipal Directors have operational autonomy and the Law does not empower the Bureau to specify frequency of packaged commodity inspections. However, many municipalities reported that they devote little or no time to performing this type of inspection. We note that, in areas where these inspections are performed with some frequency, a number of packages are found to contain less than is indicated by the label, including packages of brand-name items that are sold throughout the State. For example, during 1999, 345 packaging violations were detected and \$265,825 in fines were collected by one municipality. Some municipal officials told us they would benefit from additional training in this area, and several officials told us they do not have enough staff to perform frequent inspections of packaged commodities. Although the Bureau offers a five-day training school, including at least one day for package testing, several municipalities do not attend the training because of the cost and time away from the job. We recommend the Bureau find alternative methods to address the municipalities' training needs. Regarding the shortage of municipal inspectors, the Bureau does not fund municipal Weights and Measures programs; and, as a result cannot require that municipalities hire staff. We recommend that the Bureau address this need for training, and work closely with the municipalities to provide adequate inspection coverage. (See pp. 10-13)

The Bureau and the municipalities share the responsibility for performing inspections of gasoline and diesel fuel. We reviewed the results of all the inspections conducted between 1995 and 2000, and found that very few of the fuel samples tested failed inspection. For example, during 1999, about 1 percent of the gasoline samples from gas stations (194 of 13,550 samples) failed inspection. We believe that the Bureau should do a risk assessment to determine whether the level of staff resources used for the inspections of gasoline and diesel fuel is appropriate. We also found that the Bureau needs to monitor the municipalities more closely to ensure that the inspection coverage

within the municipality is appropriate and proper follow-up actions are taken when fuel samples fail inspections. (See pp. 14-18)

The Bureau is responsible for testing the accuracy of more than 1,200 weighing/measuring devices that require specialized test equipment, such as large-capacity scales and meters on trucks that deliver liquefied petroleum gas (LPG meters). We found that some of these tests are not performed correctly, and appropriate follow-up or enforcement actions may not always be taken when violations are identified. For example, Bureau officials could not document that follow-up or enforcement actions were taken in response to 17 of 21 violations in which an LPG meter was found to be inaccurate in favor of the owner by at least 4 percent (i.e., customers received no more than 96 gallons for every 100 gallons of liquefied petroleum gas that was billed to them). In addition, even though Bureau inspectors identified numerous violations over a 27-month period, the Bureau issued only one warning letter and did not try to fine any violators during this period. We recommend that a number of improvements be made in the Bureau's inspection and enforcement practices. (See pp. 19-23)

---

---

## ***COMMENTS OF DEPARTMENT OFFICIALS***

A draft copy of this report was provided to Department officials for their review and comment. Their comments have been considered in preparing this final report. Department officials agreed or partially agreed with 13 of the 15 recommendations in this report, and indicated actions taken or planned to implement them. They did not agree with our conclusions or recommendations regarding local municipalities because, in their opinion, the Department cannot enforce or dictate policy to the local municipalities. The Department does not provide any funding to pay expenses that would be incurred in the implementation of certain recommendations, such as increases in the amount of time for performing inspections of packaged commodities. They also provided information that has been used to clarify or revise certain parts of this report.

# CONTENTS

---

## ***Introduction***

---

Background	1
Audit Scope, Objectives and Methodology	3
Comments of Department Officials to Audit	4

## ***Inspections***

---

Weighing/Measuring Devices Inspected by the Municipalities	5
Recommendations	9
Packaged Commodities	10
Recommendations	13
Gasoline and Diesel Fuel	14
Recommendations	18
Specialized Weighing/Measuring Devices Inspected by the Bureau	19
Recommendations	24

## ***Reporting***

---

Recommendations	26
-----------------	----

## ***Appendix A***

---

Major Contributors to This Report

## ***Appendix B***

---

Comments of Department of Agriculture and Markets' Officials

---

# INTRODUCTION

---

## Background

In accordance with Section 220.5 of the Codes, Rules and Regulations of the State of New York (NYCRR), all devices used to weigh and measure commodities that are sold on the basis of their weight, volume or size must be inspected and tested for accuracy at least once a year. Such devices include gas pumps, delicatessen scales, truck-mounted oil meters, taximeters, wire and cordage meters, and other devices. In addition, packaged commodities such as foods, cleaning agents, paints, and yard and garden products are subject to inspection to ensure that the packages contain the amount of the commodity indicated on the label. Furthermore, gasoline and diesel fuels sold for use in motor vehicles are subject to inspection to ensure that the fuels meet certain quality standards and are properly labeled for sale. All of these inspection activities are overseen by the Department of Agriculture and Markets (Department) as part of its Weights and Measures Program.

The responsibility for performing these inspections is shared by the Department's Bureau of Weights and Measures (Bureau) and 64 municipalities (each of the 57 counties outside New York City, the City of New York, and the Cities of Cohoes, Dunkirk, Mount Vernon, Rensselaer, Watervliet and Yonkers). Generally, the municipalities are expected to inspect packaged commodities, most weighing/measuring devices, and gasoline and diesel fuels sold by retail stations. The Bureau inspects selected specialized weighing/measuring devices and gasoline and diesel fuels sold by distribution terminals.

In addition to performing certain types of inspections, the Bureau supervises the inspections performed by the municipalities, provides training to municipal inspectors, assists municipal officials when requested, coordinates investigation and enforcement activities involving more than one municipality or other government agencies, and develops regulations, procedures and guidelines to ensure uniformity in the conduct of the inspections and the enforcement of the law and regulations. Since the Department is required by the Agriculture and Markets

Law to supervise municipal Weights and Measures Program activities, the Bureau requires the municipalities to submit detailed annual reports on the results of their Weights and Measures Program activities.

According to the Department, over 84,000 weighing/measuring devices are used by more than 29,000 commercial establishments statewide, and gasoline and diesel fuel is distributed from about 200 terminals and sold from about 8,300 retail stations statewide. The Bureau employs 15 field specialists who perform inspections and provide training and other assistance to the municipalities, and the municipalities employ a total of about 190 individuals to perform inspections. According to the annual reports submitted by the municipalities for 1999, staffing for the Weights and Measures Program in the municipalities ranged from one part-time individual in four municipalities to 39 full-time employees in New York City. Most of the municipalities had five or less employees, and many had one employee.

Municipal Weights and Measures Program activities are funded by the municipalities and by the State. The Bureau reimburses municipalities for their cost of obtaining gasoline and diesel fuel samples (in calendar year 2000, the Bureau budgeted \$39 per sample of fuel).

The inspections of gasoline and diesel fuels sold for use in motor vehicles (also known as the Petroleum Quality Program) are funded separately from other Weights and Measures Program activities, as they are funded by a motor fuel tax collected from retailers by the Department of Taxation and Finance and by the Clean Air Program administered by the Department of Environmental Conservation. For the fiscal year ended March 31, 2001, about \$3.4 million was budgeted for these inspections, of which \$3.0 million was to be provided by the motor fuel tax and about \$400,000 was to be provided through the Clean Air Program.

In addition to the \$3.4 million for petroleum quality inspections, the Bureau was appropriated about \$600,000 in the 2000-01 fiscal year for other Weights and Measures Program activities. A total of 26 staff is employed by the Bureau, which is headed by a Director.

---

---

## ***Audit Scope, Objectives and Methodology***

We audited the Department's administration of the Weights and Measures Program for the period July 1, 1998 through December 31, 2000. The objectives of our performance audit were to evaluate the effectiveness of the Bureau in (1) monitoring municipal Weights and Measures Program activities and (2) performing inspections of specialized weighing/measuring devices and petroleum quality. To accomplish our objectives, we interviewed officials and reviewed records at the Bureau and at selected municipalities. We also contacted weights and measures officials from ten other states to discuss their programs.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Department which are included within the audit scope. Further, these standards require that we understand the Department's internal control structures and compliance with those laws, rules and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach to select activities for audit. We therefore focus our audit efforts on those activities we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made, and devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, we prepare our audit reports on an "exception basis." This audit report, therefore, highlights areas needing improvement.

---

---

## ***Comments of Department Officials to Audit***

A draft copy of this report was provided to Department officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix B. Department officials agreed or partially agreed with 13 of the 15 recommendations in this report, and indicated action was taken or is planned to implement them. They did not agree with the recommendations that require increased monitoring of local municipalities due to the absence of State funding and the diversity of each municipal program. We recognize that an increase in certain inspection activities may result in additional costs to the local municipalities, there is a need for the Department to strengthen its monitoring of local programs to verify that certain activities such as inspections of packaged commodities are done.

Within 90 days after final release of this audit report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Agriculture and Markets shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

---

# INSPECTIONS

---

According to information reported to the Bureau by the municipalities, most of them inspect the largest part of the weighing/measuring devices in their jurisdiction at least once a year. However, many municipalities report that they do not inspect all the devices in their jurisdiction at least once a year, as required by law, and some municipalities report that they fail to inspect a significant portion of the devices in their jurisdiction at least once a year. We also found that many municipalities report that they devote little or no time to inspecting packaged commodities. Bureau's field specialists are in contact with the municipal inspectors throughout the year. However, the Bureau does not follow up on the information in the annual report to determine whether inspection coverage can be improved in an area where there may not be sufficient coverage.

We also noted that the Bureau and the municipalities need to assess the number of petroleum quality inspections based on the small number of violations that are detected. In addition, improvements are needed in the Bureau's inspections of specialized weighing/measuring devices if all the inspections are to be conducted as intended: and if there is to be reasonable assurance that appropriate actions will be taken when violations are identified.

We recommend that the Bureau be more active in its monitoring of the municipalities' inspection activities, ensure that appropriate inspection coverage is provided in each municipality, and ensure that appropriate follow-up actions are taken when violations are identified. We also recommend that the Bureau develop guidelines for its inspections of specialized weighing/measuring devices, and evaluate the need to develop performance standards to assist the municipalities in the administration of their inspection activities.

---

## ***Weighing/Measuring Devices Inspected by the Municipalities***

Most of the weighing/measuring devices inspected in the Weights and Measures Program are inspected by the municipalities. In their annual reports to the Bureau, the

municipalities are required to indicate the total number of weighing/measuring devices in their jurisdiction (by type of device), the number of devices inspected and tested during the year, the number tested that were correct or within tolerance, the number incorrect, and the number of devices not tested. According to the Agriculture and Markets Law, each of these devices must be inspected and tested for accuracy at least once a year.

We reviewed the annual reports submitted by the municipalities for the 1998 and 1999 calendar years. As is shown by the following table, in each of these years, the inspection requirement in the Agriculture and Markets Law was not met, as in many of the municipalities, some of the weighing/measuring devices were not inspected:

<b>Reported Inspection Results</b>	<b>Number of Municipalities</b>	
	<b>1998</b>	<b>1999</b>
All Devices Reportedly Inspected	22	19
Up to 10% of Devices Not Inspected	22	23
11% to 20% of Devices Not Inspected	7	8
21% to 30% of Devices Not Inspected	7	4
31% to 40% of Devices Not Inspected	1	5
More Than 40% of Devices Not Inspected	2	1
Annual Report Not Submitted or Incomplete	3	4
Total Number of Municipalities	64	64

The reported inspection results were consistent during the two-year period, as in each year, about one-third of the municipalities reported that they inspected all the devices in their jurisdiction, about one-third reported that they inspected between 90 and 99 percent of the devices in their jurisdiction, and about one-third reported that they inspected less than 90 percent of the devices in their jurisdiction. We note that a municipality's ability to meet its inspection requirement did not seem to be related to its size, location or population density, or the number of devices in its jurisdiction.

Even though the Bureau is responsible for supervising the municipalities' inspection efforts, Municipal directors have operational autonomy and the Law does not empower the Department to enforce local compliance with annual inspection requirements. The Department also has representatives in the field and regional offices to follow up on inspection coverage problems, and Department officials have stated that routine contacts with the municipal directors is part of their duties. However the Department does not have documentation, for example, indicating that it does not follow up on the information reported by the municipalities to determine whether inspection coverage can be improved in areas where it may not be adequate. Bureau officials could contact municipal officials to determine why many devices were not inspected, whether the uninspected devices were scheduled for inspection early in the following year, whether an effort was made to ensure that the most critical devices were inspected during the year, and whether assistance could be provided or other actions taken to improve the inspection coverage.

For example, one municipality reported that 44 percent of the devices in its jurisdiction were not inspected in 1999. When we contacted the appropriate officials in this municipality, they told us they had not been contacted by the Bureau to determine why so many devices were not inspected. In the absence of such supervisory oversight, corrective action is less likely to be taken in municipalities providing insufficient inspection coverage. We also note that the protection intended by the Agriculture and Markets Law is not fully provided to citizens in these municipalities.

To help the municipalities provide adequate inspection coverage, the Bureau could develop guidelines indicating the number of weighing/measuring devices that can reasonably be inspected by a full-time inspector within a certain period of time (such as a month or a year). Such guidelines would help municipalities determine whether they had enough inspectors to meet their inspection workload. While guidelines of this kind have not been developed by any of the ten other states that we contacted, guidelines specific to New York State could be developed on the basis of the inspection results that have been reported by the municipalities.

For example, according to the annual reports for 1999, the inspection requirement was met by 19 municipalities. On the

basis of staffing and other information in the annual reports submitted by these 19 municipalities, we calculated the inspection workload in each municipality (i.e., the total number of devices to be inspected by the municipality divided by the number of full-time equivalent inspectors employed by the municipality, treating each part-time inspector as a .5 inspector). We found that, during 1999, municipalities with an inspection workload as high as 1,712 devices per full-time equivalent inspector and 1,404 devices per full-time equivalent inspector were able to meet the inspection requirement. If this analysis were conducted for a number of years, and appropriate consideration were given to variances in the municipalities' geography, population density and mix of devices, meaningful performance standards could be developed for each type of municipality.

We also calculated the inspection workload for the remaining 41 municipalities that submitted complete annual reports for 1999. None of these municipalities met the inspection requirement, and we found that while the inspection workload was relatively heavy in some of these noncompliant municipalities, it was relatively light in others. For example, while a municipality that reportedly inspected 91 percent of the devices in its jurisdiction had an inspection workload of 1,947 devices per full-time equivalent inspector, a municipality that reportedly inspected only 78 percent of the devices in its jurisdiction had an inspection workload of only 581 devices per full-time equivalent inspector (the inspection workloads in 1999 for the 60 reporting municipalities averaged 969 devices per full-time equivalent inspector, and ranged from 280 to 2,130 devices per full-time equivalent inspector). We also determined that differences in inspection effectiveness were not related to differences in geography or population density. Accordingly, if the Bureau monitored the municipalities' inspection performance against appropriate performance standards, it could identify municipalities where there is an opportunity for improvement.

## **Recommendations**

1. Review and follow up on the information contained in the annual reports. Document contact with municipal officials who did not meet their inspection requirement, and identify the actions taken to address the shortfalls, including a proposal to strengthen the enforcement of inspection requirements.
2. Develop performance standards for the municipalities' inspections of weighing/measuring devices, and monitoring the municipalities' annual performance against the standards.

---

---

## ***Packaged Commodities***

**U**nder the provisions of the Agriculture and Markets Law, packaged commodities such as foods, cleaning agents, paints, and yard and garden products are subject to inspection to ensure that the packages contain the amount of the commodity indicated on the label. These inspections, which are to be performed by the municipalities, may take place at both retail and wholesale establishments, and can be done for commodities that are packaged where they are sold (such as meat or produce at a supermarket) as well as for commodities that are not packaged where they are sold (such as national and international brand-name items). If a package contains less than is indicated by the label, the package can be removed from sale, and a fine or other penalty can be assessed by the municipality.

In their annual reports to the Bureau, the municipalities are required to indicate how much of their total time (by percentage) is devoted to inspections of packaged commodities. In addition, each month the municipalities are required to submit to the Bureau a report summarizing the results of all the packaged-commodity inspections conducted during the previous month (even if none were conducted).

We reviewed the annual reports submitted by the municipalities for 1998 and 1999, and the monthly package inspection reports submitted by the municipalities for 1999. We found that many municipalities devote little or no time to inspecting packaged commodities. For example, as is shown by the following table, in both 1998 and 1999, about half of the municipalities reported that no more than 5 percent of their time was devoted to inspections of packaged commodities:

Percentage of Time Devoted to Inspections of Packaged Commodities	Number of Municipalities	
	1998	1999
Less Than 1 %	8	11
1% to 5%	24	23
6% to 10%	16	12
11% to 15%	4	4
16% to 20%	4	5
21% to 25%	2	2
More Than 25%	2	2
Annual Report Not Submitted or Incomplete	4	5
Total Number of Municipalities	64	64

The Bureau's staff of field specialists are in contact with municipal inspectors throughout the year and are aware of the problems they encounter. However, we found that the Bureau does not routinely follow up with municipalities that report devoting little or no time to the inspection of packaged commodities. We also noted that the Law does not specify the frequency for these inspections.

In addition, when we reviewed the monthly package inspection reports for 1999, we found that more than half of the municipalities (34 of the 64) had not submitted any reports for the entire year. Moreover, the Bureau did not follow up with the municipalities that failed to submit their monthly reports, and neither compiled nor analyzed the reports that were submitted. Rather, the Bureau simply filed all monthly reports that were submitted.

If a municipality does not provide adequate inspection coverage for packaged commodities, the protection intended by the Agriculture and Markets Law is not fully provided to the citizens in the municipality. We note that, when adequate inspection coverage is provided, violations are detected. For example, according to the annual report for 1999, 345 violations were detected, and \$265,825 in fines were collected, by a municipality that devoted 43 percent of its time to package

inspections. (During this same year, this municipality reported that it inspected all 4,071 of the weighing/measuring devices in its jurisdiction.) In another municipality, which devoted 30 percent of its time to package inspections, 131 violations were detected and \$112,225 in fines were collected. (This municipality inspected 98 percent of the weighing/measuring devices in its jurisdiction that year.)

Moreover, the municipality's records indicated that some of the packaging violations related to national and international brand-name items that are sold throughout the State. We therefore conclude that consumers throughout the State were at risk of being shortchanged by similarly mislabeled packages.

To determine why many municipalities devote little or no time to inspections of packaged commodities, we spoke with Weights and Measures Program Directors in eight municipalities, (we randomly selected 4 of the 11 municipalities that reportedly spent less than 1 percent of their time on such inspections, and 4 of the 22 municipalities that reportedly spent between 1 and 5 percent of their time on such inspections, in 1999). Seven of the eight Directors told us that staffing was an issue and they needed more inspectors.

The Bureau does not fund the Weights and Measures programs and, as such, cannot require municipalities to hire staff. However, the Bureau should consider using its field specialist to assist municipalities inspect packaged commodities and increase coverage in those areas that devote little or no time to this process.

Five of the Directors further stated that inspections of packaged commodities were a low priority, since the Agriculture and Markets Law specifically requires that each weighing/measuring device be inspected annually, but makes no specific requirement for packaged commodities. Some of the Directors also stated that they or their staff would benefit from additional training in performing package inspections. We note that each year the Bureau offers a five-day training school for municipal Weights and Measures employees and according to the Bureau Director, at least one day of this training is generally set aside for package inspections.

We also asked Bureau officials why they did not follow up with the municipalities that failed to submit their monthly package

inspection reports, and did not compile nor analyze the reports that were submitted. The officials told us that they used to maintain a database for the package report information that was used the database to develop three key reports that summarized package failures (packages that contained less or more than labeled) by municipal jurisdiction, product type, and the name of the packer. They told us that these reports helped the Bureau focus on problem areas. However, in 1998, the Bureau stopped entering information into the database due to insufficient staff. The Bureau Director told us that he plans to use the database again for 2001.

We note that both the Bureau's monitoring, and the municipalities' administration, of package inspections would be facilitated if performance standards were developed for the inspections. For example, each municipality could be expected to perform a certain number of inspections based on the population in the jurisdiction (with allowances made for variations in population density or other relevant factors). In the absence of such standards, it is difficult for Bureau officials to evaluate whether the inspection coverage provided by a municipality is adequate, and it is difficult for municipal officials to determine how much of their resources should be devoted to these inspections.

### **Recommendations**

3. Routinely follow up with the municipalities that indicate in their annual report or monthly package inspection reports that they devote little or no time to package inspections to identify the reasons for the light inspection coverage and determine whether actions can be taken to improve inspection coverage in the municipality.
4. Enter the information from the monthly package reports onto the existing database, use this information to develop package failure summary reports, and use the reports as necessary to coordinate and strengthen municipal inspection practices.
5. Formally assess the need to develop performance standards for inspections of packaged commodities, and to monitor the municipalities' annual performance against the standards.

---

---

## ***Gasoline and Diesel Fuel***

The Petroleum Quality Program, which was established in 1992, is part of the Weights and Measures Program. In the Petroleum Quality Program, gasoline and diesel fuels sold for use in motor vehicles are subject to inspection to ensure that the fuels meet certain quality standards and are properly labeled for sale. The fuels sold by retail stations are inspected by the municipalities, and the fuels sold by distribution terminals are inspected by the Bureau. Random samples of various grades of gasoline and diesel fuel are collected from the retail stations and terminals, picked up by a private contractor, and transported to a laboratory where tests are performed to determine if the products meet specifications.

According to records maintained by the Bureau, for the 2000 calendar year, 13,223 gasoline samples and 1,448 diesel fuel samples were collected from about 8,300 retail stations, and 4,938 gasoline samples and 770 diesel fuel samples were collected from about 200 terminals. The Bureau determines the total number of samples collected each year, including the number collected by each municipality. This determination is based on the amount of funding available, the number of active retail stations and terminals, and the fee charged by the laboratory.

The Bureau maintains records showing the results of all the petroleum quality inspections conducted each year. We reviewed these records for the six calendar years 1995 through 2000, and as is shown by the following two tables, we found that very few of the samples collected during this six-year period failed inspection (i.e., did not meet required quality standards or were inaccurately labeled for sale).

### Gasoline Inspections

Year	Samples from Retail Stations			Samples from Terminals		
	Collected	Failed	Percent	Collected	Failed	Percent
1995	14,567	300	2.06	9,041	70	.77
1996	12,577	313	2.49	7,963	70	.88
1997	13,342	269	2.02	6,749	55	.81
1998	13,275	213	1.60	6,256	40	.64
1999	13,550	194	1.43	5,751	37	.64
2000	13,223	228	1.72	4,938	31	.63

### Diesel Fuel Inspections

Year	Samples from Retail Stations			Samples from Terminals		
	Collected	Failed	Percent	Collected	Failed	Percent
1995	2,266	6	.27	743	9	1.21
1996	1,580	4	.25	916	6	.66
1997	1,454	1	.07	764	0	.00
1998	1,490	7	.47	854	0	.00
1999	1,469	9	.61	844	0	.00
2000	1,448	4	.28	770	2	.26

However, there is no indication the Bureau has significantly reduced the number of samples collected from retail stations by the municipalities, or the number of diesel fuel samples its own field specialists collect from distribution terminals. However, significant reductions were made in the number of gasoline samples collected by Bureau field specialists from distribution terminals. This number has been reduced each year since 1995, and by a total of 45 percent over the six-year period.

The annual reports submitted by the municipalities for 1999, indicate about 7.6 percent of their time is devoted to petroleum quality inspections. We believe the Bureau needs to do a risk assessment to determine whether the level of staff resources used for this activity is appropriate. As was previously noted, many municipalities fail to inspect all the weighing/measuring devices in their jurisdiction at least once a year, as is required

by law, and many municipalities devote little or no time at all to inspecting packaged commodities.

We recommend that the Bureau reassess the number of petroleum samples collected for analysis each year. To guide the Bureau in its determination of the number of samples that should be collected, it should establish tolerance rates (i.e. acceptable number of failures) for each type of sample collected in the Petroleum Quality Program (i.e., gasoline from retail stations, gasoline from terminals, diesel fuel from retail stations and diesel fuel from terminals), and collect fewer of each type of sample as long as its failures do not exceed the acceptable tolerance rate. For example, if an acceptable tolerance rate of 3 percent were established for gasoline samples from retail stations, consideration would be given to reducing the number of gasoline samples collected each year from retail stations as long the failure rate for the year remained below 3 percent. If the rate exceeded 3 percent, consideration would be given to increasing the number of samples collected in the following year.

We note that, if fewer petroleum samples were collected, State costs would be reduced, as both the fees paid to the municipalities to collect samples and the fees paid to the private laboratory to analyze samples would be lower (during the 2000-01 fiscal year, these fees were expected to total about \$2.1 million).

A Bureau official told us it is possible to reduce the number of petroleum samples collected, however, such reductions may result in the laboratory charging a higher fee for each sample that is analyzed. The official also noted that if the payments to the municipalities are reduced, the total amount of funding available for municipal Weights and Measures Program activities would also be reduced. Accordingly, if the time of the municipal inspectors is to be shifted from petroleum quality inspections to other types of inspections, additional funding would be needed to replace the funding previously provided through the Petroleum Quality Program. While there may be a risk that a laboratory will charge a higher fee, Bureau officials should closely monitor the vendors so that increases in fees are properly justified and supported. The Bureau needs to focus on performing the most effective inspections with its limited resources.

When a petroleum sample fails inspection, the Bureau is notified by the laboratory. Normally, the Bureau requests that the sample be retested to verify the results of the initial analysis. If the sample fails the retest, and was collected from a retail station, the municipality that collected the sample is notified by the Bureau and is responsible for following up with the retail station. The Bureau is responsible for following up on samples collected from distribution terminals. If the follow-up inquiries with the retail station or distribution terminal lead the Municipal Director or Bureau Director to believe that the inspection failure may not represent an isolated incident, the Director is authorized to initiate a formal investigation.

If Bureau officials are to be reasonably assured that appropriate follow-up actions are taken when inspections are failed by samples collected from retail stations, the officials need to monitor the follow-up actions taken by the municipalities. However, we found that the Bureau does not have a formal system in place for monitoring municipal follow-up actions. In the past, the Bureau required municipalities to submit a form indicating the results of their follow-up actions, but this process was discontinued in 1998 due to a lack of staff and increased workload. If inspection failures are not appropriately investigated, significant errors or deliberate attempts to defraud the public may not be detected.

Each month, the Bureau determines how many petroleum samples each municipality should collect. In making this determination, the Bureau ensures that each municipality's share of the total number of samples is proportionate to its share of the total number of retail stations in New York State. The Bureau does not select the particular retail stations from which samples are to be collected, but expects each municipality to collect samples from all of the stations in its jurisdiction within a reasonable period of time.

The Bureau maintains an electronic database that accounts for all the retail gas stations in the State and shows the results of all the petroleum quality inspections conducted at these stations. We reviewed the inspection data for the 1998 and 1999 calendar years to determine whether the municipalities appeared to be making an effort to collect samples from all of the stations in their jurisdiction within a reasonable period of time. We found indications that several municipalities may not

be making such an effort, and selected four municipalities for closer examination.

For two of the four municipalities, we analyzed where samples were collected in 1998, and for the other two municipalities, we analyzed where samples were collected in 1999. We found that, in all four municipalities, the municipal inspector(s) visited certain stations more than once during the year and did not visit other stations at all. For example, in one municipality, seven stations were visited twice and four stations were visited three times, while 39 stations were not visited at all during the year. To determine whether the stations that were visited more than once during the year had prior inspection failures that would justify the repeated visits, we reviewed their inspection results during the previous two calendar years. However, we found no prior inspection failures at any of these stations.

We therefore conclude that the inspection coverage expected by the Bureau is not provided in some municipalities. We note that the Bureau does not monitor the inspection coverage provided by the municipalities to ensure that samples are collected from all of the stations in a municipality's jurisdiction within a reasonable period of time.

### **Recommendations**

6. Analyze and document the results regarding the number of petroleum samples collected for analysis each year and use this information to establish the number of samples to be collected in the future. In addition, actual failure rates should be compared to predetermined tolerance levels for each type of sample.
7. Establish a formal system for monitoring the follow-up actions taken by municipalities when samples from retail stations fail inspection.
8. Monitor the inspection coverage provided by the municipalities to ensure that samples are collected from all of the stations in a municipality's jurisdiction within a reasonable period of time.

---

---

## ***Specialized Weighing/Measuring Devices Inspected by the Bureau***

The Bureau conducts most inspections of weighing/measuring devices that require costly specialized test equipment. The devices inspected most frequently by the Bureau are large-capacity scales, meters on trucks that deliver liquefied petroleum gas (LPG meters), and meters used to measure the amount of gasoline, heating oil or diesel fuel pumped from storage tanks into tanker trucks (terminal rack or TR meters). Each year, the Bureau conducts about 150 inspections of large-capacity scales, about 800 inspections of LPG meters, and about 300 inspections of TR meters.

To test the accuracy of large-capacity scales, the Bureau uses weights that have been certified by the Bureau's metrology laboratory. To test the accuracy of LPG and TR meters, the Bureau uses large storage tanks (provers) that have been calibrated by the Bureau's metrology laboratory. The Bureau tests about 10 percent of the large-capacity scales and about 60 percent of the TR meters used in New York State. The remaining scales and meters are tested by private companies hired by the owner and observed by the municipal inspector. The Bureau tests all the LPG meters in New York State outside of Suffolk County, which has its own equipment for testing the meters. Like other weighing/measuring devices used in New York State, specialized weighing/measuring devices must be tested for accuracy at least once a year.

According to the Bureau's policy manual, if a large-capacity scale, LPG meter or TR meter fails a test conducted by a Bureau field specialist, the scale or meter is to be repaired and retested. If the inaccuracy of the scale or meter favors the owner of the device (e.g., if an LPG meter overstates the amount of heating oil sold to the customer), and the device cannot be repaired or recalibrated immediately, it is to be taken out of service until it has been repaired and successfully retested.

A scale or meter fails a test when it is unable to record a known weight, or measure a known volume, within a certain degree of accuracy. For example, if a scale records a 100-pound weight as 104 pounds, and the acceptable tolerance for error is plus or minus 3 percent, the scale has failed the test. The National Institute of Standards and Technology (NIST) has established tolerances (acceptable deviation ranges) for large-capacity

scales, LPG meters and TR meters. According to the Bureau's policy manual, the NIST tolerance ranges should be used by Bureau field specialists when evaluating the accuracy of the scales and meters tested by the Bureau.

We were told by Bureau officials that, if an LPG meter or TR meter is found by a Bureau field specialist to be inaccurate by an excessive amount, and the inaccuracy favors the owner of the meter, the Bureau Director should be notified and should decide if further action is warranted. Such further action could include corrective or punitive actions, such as sending a warning letter to the owner of the meter, levying a fine on the owner, or requiring the owner to make restitution to customers. When such errors are found in large-capacity scales, the appropriate Municipal Director is to be notified and is to decide if further action is warranted.

While we were told it is the practice that the Bureau Director be notified and corrective or punitive actions be considered when LPG and TR meters are found to be inaccurate by an excessive amount, we found that this practice is not included in the Bureau's policy manual and excessive inaccuracies are not defined in the policy manual or in any other written Bureau procedures. Moreover, in our discussions with Bureau personnel, we were given conflicting opinions about what constitutes an excessive inaccuracy for LPG meters. For example, one Bureau official told us he considered an error of 2 percent or more in favor of the owner excessive for an LPG meter. However, another Bureau official told us he considered an error of 4 percent or more excessive for an LPG meter. (The NIST tolerance range for LPG meters is 1 percent.) If what constitutes an excessive error rate for the devices tested by the Bureau is not clearly defined and commonly understood by Bureau personnel, the Bureau Director is less likely to be notified about situations in which warning letters should be sent, fines should be levied or restitution should be made to shortchanged customers.

According to records maintained by the Bureau, during the period July 1, 1998 through September 30, 2000, Bureau field specialists inspected 1,695 LPG meters and 670 TR meters.

We examined the test reports relating to the failed tests for the LPG meters, and identified the tests in which the meters appeared to be inaccurate in favor of the owner by an excessive

amount. We then determined whether the Bureau Director was notified about these test results and whether appropriate follow-up actions were considered, in accordance with the Bureau's practice. We found that, in most of these instances, the Bureau Director was not notified and no follow-up actions of any kind were documented by the Bureau.

For example, based on our discussions with Bureau officials, it seemed likely that an error of 4 percent or more in favor of the owner for an LPG meter would be considered excessive by the Bureau. When an LPG meter is inaccurate by this amount, customers receive no more than 96 gallons for every 100 gallons of liquefied petroleum gas that is billed to them. We identified a total of 21 tests in which an LPG meter was found to be inaccurate in favor of the owner by at least 4 percent. We requested documentation of the follow-up actions that had been taken in response to these 21 test failures. Bureau officials were able to provide documentation showing that follow-up actions had been taken in response to four of the failures.

For example, in one of the follow-up actions, the Bureau required the company to make restitution to the customers who were overcharged. In the other three follow-up actions, a Bureau field specialist conducted a field investigation and filed a report. However, three to seven months had elapsed since these reports were filed, and there was no documentation indicating whether a fine had been levied, restitution had been required, a warning letter had been sent, or some other corrective/punitive action had been taken, or whether such an action had been considered unnecessary.

For the remaining 17 test failures, no documentation was provided. The Bureau Director told us that, due to changes in staff personnel, records were not filed consistently. In addition, even though all 21 of these test failures should have been reported to the Bureau Director, he stated that most of the failures were not reported to him.

The Bureau normally uses an 800 gallon prover (tank) to test TR meters. The NIST tolerance range would allow a 2.4 gallon variance for an 800 gallon prover. Bureau officials did not define what they would consider an excessive failure reading. Consequently, we followed-up on all test failures of 2.5 gallons or more in favor of the device owner.

We identified 54 tests in which a TR meter was found to be inaccurate in favor of the owner by at least 2.5 gallons (since the NIST tolerance range for TR meters is .3 percent, an error of 2.5 gallons or more seems excessive). When testing a TR meter, the Bureau field specialist takes two readings: the first reading is taken as the oil is pumped slowly, and the second reading is taken as the oil is pumped quickly (in practice, it is usually pumped quickly). For 12 of the 54 tests, the meter failed both the slow test and fast test in favor of the owner. We requested documentation of the follow-up actions that had been taken in response to these 12 test failures. However, Bureau officials were unable to provide any such documentation, and the Bureau Director told us that none of these failures had been reported to him.

For the remaining 42 tests, the test reports indicated that, in 11 of the 42 tests, the meters were adjusted after the slow test and before the fast test. Ten of these 11 meters passed the fast test. (One meter failed the fast test, but the failure was in favor of the customer.) However, we believe the adjustments made after the slow test invalidated the results of the fast test. According to the Bureau's policy manual, a TR meter should not be adjusted before the fast test is completed. The Bureau Director agreed that these tests were not proper, because meters should be tested in their "as-found" condition. For the remaining 31 tests, the test reports did not indicate whether the meters were adjusted before the fast test. However, all 31 meters passed the fast test after failing the slow test, so it is possible that they were adjusted but the adjustment was not noted on the test report.

We conclude that significant improvements are needed in the Bureau's TR meter testing practices. If meters continue to be adjusted in the middle of their tests, conditions requiring follow-up action by the Bureau are less likely to be identified and corrected.

We also conclude that significant improvements are needed in the Bureau's documentation practices. If the follow-up actions taken in response to excessive test failures are not adequately documented, Bureau management has less assurance that the appropriate follow-up actions were taken. If appropriate corrective and punitive actions are not taken when LPG and TR meters are found to shortchange customers, unscrupulous and unconscientious operators may not improve their practices.

According to the Agriculture and Markets Law, if an LPG or TR meter is determined by the Bureau to be inaccurate, a fine may be levied on the owner of the meter. Such a fine may not exceed \$300 for a first violation or \$600 for any subsequent violation. All fines levied by the Department are processed by the Department's Counsel's Office, and in calendar year 2000, a total of \$1.1 million in fines was collected by Counsel's Office. Violations detected by the municipalities are also subject to fines, but these fines are levied, processed and collected by the municipalities.

When we asked Bureau officials about their policy for enforcing the law and regulations relating to the Weights and Measures Program, we were told that the Bureau has a general policy of inform, warn and penalize. Although there is a written policy, there are no specific guidelines describing the circumstances in which a warning would be issued or a fine would be imposed. As was previously described, we identified several instances in which LPG and TR meters were found to be excessively out of tolerance. In some of these instances, meters owned by the same retail establishment were out of tolerance in the same or successive years. However, between July 1, 1998 and September 30, 2000, the Bureau issued only one warning letter, and did not ask the Counsel's Office to levy any fines.

Bureau officials told us they have not asked the Counsel's Office to levy fines in recent years because the process can be time-consuming. The Bureau Director told us that he sometimes orders companies to make restitution to customers who were overcharged because of inaccurate LPG meters. He stated that the time and effort required to identify and reimburse such customers is penalty enough. We agree that restitution is a good policy, but also believe that fines may be warranted in some circumstances. For example, some companies, especially repeat offenders, may not devote enough effort to keeping their meters accurate if their only penalty is to be required to refund overpayments to customers. The Bureau Director informed us that he was working with the Counsel's Office to develop guidelines for determining how much a company would be fined in various circumstances.

## **Recommendations**

9. Develop guidelines specifying the circumstances in which LPG meter and TR meter test failures should be reported to the Municipal Director or Bureau Director, and monitor Bureau personnel compliance with these guidelines.
10. Ensure that appropriate follow-up actions are taken in response to LPG and TR meter test failures, and ensure that these actions are adequately documented.
11. Instruct Bureau field specialists not to adjust TR meters until their tests are completed, and monitor the inspections to ensure that these instructions are followed.
12. Document the Bureau's enforcement policy by developing guidelines that define the circumstances when a warning letter will be issued, a fine will be levied, restitution will be required, or other particular punitive or corrective actions will be taken.

---

## REPORTING

---

The municipalities are required to report certain information to the Bureau in a detailed annual report. We concluded that the annual reporting process would be facilitated if it were automated. We also concluded that additional follow-up action is needed by the Bureau when annual reports are not submitted.

By February 1 of each year, the municipalities are required to submit a detailed annual report summarizing various aspects of their Weights and Measures Program activities for the prior calendar year. We examined the annual reports submitted by the municipalities for 1999 and 1998. We found four municipalities did not submit annual reports for 1999, and two did not submit annual reports for 1998.

Bureau officials told us they sent letters to the Weights and Measures Program Directors in these municipalities, and contacted the Directors by phone, in an effort to get the municipalities to submit their annual reports. Bureau officials learned that, in two of the municipalities, the annual reports were not submitted because of extenuating circumstances. (For example, one Director left and the information needed for the annual report had not been recorded.) However, there were no such circumstances in the other municipalities, and one of these municipalities failed to submit an annual report in both 1998 and 1999.

Despite the lack of cooperation by Weights and Measures Program Directors in some municipalities, Bureau officials did not contact higher-level officials in these municipalities in an effort to obtain the annual reports. In such circumstances, we believe it is appropriate to contact higher-level officials. The annual report is the Bureau's primary source of information about Weights and Measures Program activities in the municipalities. In the absence of information about Program activities in a municipality, the Bureau cannot supervise the activities in the municipality, as required by law.

The information contained in the annual reports is entered into a comprehensive database by the Bureau. Once the information is in the database, it can be compiled, compared and analyzed.

However, when we examined the process used in entering information from 1999 annual reports onto the database, we identified significant delays. Even though the majority of the reports were submitted in January 2000, the Bureau did not begin to enter the information onto the database until August 2000, and as of December 2000, had not entered the information from all of the reports.

Bureau officials told us the data entry process was delayed because the Bureau does not have enough staff to enter information on a timely basis. However, if an electronic reporting system were developed for the information contained in the annual report, staff would not be needed for data entry purposes, and the information reported by the municipalities would be available for compilation and analysis as soon as it was received by the Bureau.

Each year the Bureau compiles the information contained in the annual reports. However, the Bureau does not share the results of these compilations with the municipalities. As a result, the municipalities cannot compare their performance to the performance of other municipalities. We believe comparative information, such as the average number of devices tested per full-time equivalent inspector, would be helpful to municipal officials. We note that, if an electronic annual reporting system were developed, it would be easier for the Bureau to share compiled and analyzed information with the municipalities.

### **Recommendations**

13. When a municipal Program Director does not submit the annual report within a reasonable time, contact a higher-level municipal official to resolve the problem.
14. Evaluate and document the feasibility of developing an electronic reporting system for the information contained in the annual report from the municipalities.
15. Routinely analyze and compile annual report information in a manner that allows the performance of similar municipalities to be compared, and routinely share the results of these compilations and analyses with the municipalities.

---

## MAJOR CONTRIBUTORS TO THIS REPORT

---

Carmen Maldonado  
Dominick Vanacore  
Thomas A. Nowinski  
Kenneth Ring  
Mark Bowers  
Mike Durkin  
Eric Swanson  
Shelly Taleporos  
Dana Newhouse



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
1 WINNERS CIRCLE  
ALBANY, NEW YORK 12235

DIVISION OF INTERNAL AUDIT  
518-457-2771

November 9, 2001

Ms. Carmen Maldonado  
Audit Director  
Office of the State Comptroller  
Division of Management Audit  
123 William Street - 21<sup>st</sup> Floor  
New York, NY 10038

Dear Ms. Maldonado:

Attached is the Department's response to your Office's draft audit report on the effectiveness of our Weights and Measures Program. We hope that you will consider our comments and revise the report accordingly so as to present a more accurate, objective and balanced portrayal of the Department's Weights and Measures Program.

\*  
**Note**

If you have any questions regarding the response please feel free to contact me.

Sincerely,

Lawrence J. Emminger, CFE, CGFM  
Director of Internal Audit

attachment

Note: This report has been revised to reflect additional information provided in the agency response.

**Appendix B**

DEPARTMENT OF AGRICULTURE AND MARKETS  
WEIGHTS AND MEASURES PROGRAM  
RESPONSE TO AUDIT REPORT 2000-S-24

**Executive Summary**

The statement that the Division of Weights and Measures (Division) does not follow up on device testing information reported by municipalities is inaccurate. Division Weights and Measures Specialists work with local officials on a daily basis and are aware of any problems within a particular municipality in meeting device testing requirements. The Specialists, in turn, keep Division Management apprised of any problems with particular municipalities. Problems with municipalities in meeting testing requirements are addressed immediately and continuously throughout the year. We believe this to be more effective than the once a year follow up on annual reports approach recommended in the report.

\*  
**Note**

The Department disagrees with some of the comments and conclusions regarding package testing contained in the Executive Summary. Extensive training opportunities in package testing are provided to Municipal Weights and Measures employees. Whether municipalities choose to take advantage of these opportunities is a matter of local determination. The Division promotes the importance of package testing extensively with Municipal Weights and Measures Officials. Again, the amount of testing devoted to this area is a matter of local determination based on both Weights and Measures and other municipal priorities.

The Motor Fuel Quality Testing Program has proven to be a highly effective program from both an economic and environmental perspective. The reduction in failure rates since program inception has both assured consumers that they are getting what they paid for and improved air quality within the State. The Department finds no basis to support the report's conclusion that we are over testing. Lessening our diligence by significantly reducing the number of samples currently being tested as recommended in the report would, in our opinion, result in less compliance with quality standards adversely impacting both economic and environmental protections.

**Introduction**

There are several statements in the Introduction that need correction. Farm milk tanks are not subject to annual inspection as stated in the report. Also, municipalities are not reimbursed at \$39 per sample but rather on a cost reimbursement basis. The \$39 figure is used for budgeting purposes only.

\*  
**Note**

Note: This report has been revised to reflect additional information provided in the agency response.

**Response of Department Officials**

There are comments and recommendations related to package testing that the Department is seeing for the first time in this report and did not have an opportunity to discuss. Therefore, they could not have been considered in preparing the report. We would welcome the opportunity to discuss these issues with the audit team prior to finalization of the report.

\*  
**Note**

**Inspections**

We disagree with the conclusion that the Division does not follow up on the information provided by municipalities to determine whether inspection coverage can be improved. The Division is very proactive in working with municipalities to develop and maintain strong weights and measures programs. Division Weights and Measures Specialists work with local officials on a daily basis and are aware of any problems within a particular municipality in meeting testing and inspection requirements. The Specialists, in turn, keep Division Management apprised of any problems with particular municipalities. Problems with municipalities in meeting testing requirements are addressed continuously throughout the year.

\*  
**Note**

For reasons stated previously in this response, the Department disagrees with the conclusion that Division and Municipal Specialists test more petroleum quality samples than necessary.

**Weighing Measuring Devices Inspected by Municipalities**

Again, the Department disagrees with the conclusion that the Division does not follow up on the information provided by municipalities to determine whether inspection coverage can be improved. (See comments under Inspections for detailed response).

\*  
**Note**

While we believe there is merit to developing work performance standards where practical and meaningful, we do not believe useful standards can be developed in this case due to the diversity in size and scope of local weights and measures programs across the State. There are numerous factors such as population density, local statutes that define program scope and authority, staffing levels, types of devices and work unrelated to device testing (i.e. fuel quality testing, item pricing) that need to be considered when setting employee performance measures and standards. The setting of such employee productivity standards would best be left to each municipality. It should be noted that although the Department has authority to set testing frequencies for devices it does not have authority to mandate staffing levels for municipalities.

**Recommendations**

1.) Partially agree. The Department believes that its current field supervisory structure provides a more timely and effective mechanism for identifying and addressing potential problems with municipalities in meeting inspection and testing requirements. We will, however,

Note: This report has been revised to reflect additional information provided in the agency response.

begin formally following up with municipalities that fail to inspect a significant percentage of devices. This follow up action will be taken based on a review of each municipality's annual report data commencing with the 2001 annual report cycle.

The report should, however, recognize that while providing the Department with oversight responsibilities, the law does not provide the Department with authority to require municipalities to hire minimum levels of staff or with meaningful recourse against a municipality if it fails to meet testing mandates.

\*  
**Note**

2.) Disagree. For reasons previously stated we believe the development of municipal employee performance measures is a matter of local determination. The diversity of each municipal program precludes development of statewide standards.

### **Packaged Commodities**

We disagree with the conclusion that the Division does not follow-up with municipalities that devote little or no time to package testing. There is in fact considerable follow-up on package testing activities. State Specialists continuously promote package testing and provide the necessary training to municipal officials. Specialists are fully aware of who does and does not test packages within their assigned jurisdictions. Specialists stress the importance of this activity at every opportunity, particularly to those who do little or no testing.

The report should give more recognition to the strong communication network that exists among weights and measures officials at both the State and local level. Weights and Measures Officials freely communicate among themselves on a regular basis. For example, a problem with a particular type of weighing device or short weight in a nationally distributed product is quickly disseminated among officials. This type of teamwork approach enables everyone to react to any problem areas much faster than an analysis of annual or monthly summaries. We have committed significant effort at the State level to prompt follow-up on these problem areas through upstream inspections at warehouses and packaging plants. The claim on page 11 that certain violations identified by one municipality involved national and international brands and therefore put consumers statewide at risk of being shortchanged ignores this network of Weights and Measures officials through which this information would have been communicated.

\*  
**Note**

More credence should be given to the fact that staffing levels and the amount of effort devoted to various weights and measures activities are a matter of local determination based on each municipality's priorities and available resources

### **Recommendations**

3.) Partially agree. As stated in response to recommendation #1, the Department believes that its current field supervisory structure provides a more timely and effective mechanism for identifying and addressing potential problems with municipalities in meeting inspection and testing requirements. Commencing with the 2001 annual report cycle, the

Note: This report has been revised to reflect additional information provided in the agency response.

Division will formally address the issue with jurisdictions that report that no or only minimal package testing was conducted.

4.) Agree. Staffing is now available to resume collection of package checking data. We have already converted our old database into Microsoft Access and have begun entering data. We will enter current data first and work backwards until all data has been entered. The two year gap in collecting the data was a result of other Division priorities taking precedence. We will also begin reviewing data on a monthly basis to identify problem areas that may require additional review.

5.) Disagree. For reasons previously stated we believe the development of municipal employee performance measures is a matter of local determination. The diversity of each municipal program precludes development of statewide standards.

### **Gasoline and Diesel Fuel**

The table presented showing the results of gasoline samples taken from retail establishments is misleading since it lumps all grades of gasoline with all types of testing, thus skewing the results. In addition to testing for octane levels, samples are collected for testing of compliance with the Department of Environmental Conservation's Clean Air Program. It is important to differentiate between the type of testing being performed so that problems can be identified and addressed. For example, the majority of octane failures are in premium gasoline, which has a significant economic impact since consumers pay 10 to 20 cents more per gallon.

Samples for the Clean Air Program are taken to look for violations of the vapor pressure standard and not for octane violations. Also, we generally only sample regular gas to evaluate performance of dispensers which use proportional blending to get multiple octane levels. Without the regular gas sample we can't identify whether the problem is in the dispenser or with the base products. These samples also should not be included in the analysis of compliance.

Even when combining the sampling data into one category, we believe the average failure rate of 1.9 percent over the past six years combined with the relatively narrow 1.4 to 2.5 percent range in failure rates over this period, does not warrant sampling reductions. The presence of State and Local Specialists in the marketplace serves as a strong deterrent to any illegal activities that may be going on. Any reductions in sampling from their current levels could adversely impact the market protection currently provided consumers and retailers in the State.

Current sampling levels represent a base line maintenance program and provides for less than one inspection per retail station per year. Stations can receive several deliveries each week with each delivery possibly resulting in some unlawful act. In addition, compliance rates alone do not reflect the importance of maintaining a presence in the marketplace.

There is no correlation between reducing the number of samples collected at distribution terminals and reducing the number collected at retail establishments. Sampling at terminals has decreased over the past six years primarily due to a consolidation within the industry that has

\*  
**Note**

Note: This report has been revised to reflect additional information provided in the agency response.

resulted in fewer terminals. This is not the case at the retail level where the number of pumps has remained relatively constant.

### **Recommendations**

6.) We agree that petroleum sample sizes and failure rates should be analyzed each year. The Department already does this routinely. However, we disagree that the number of samples taken should be based on the prior year's failure rate. The number of samples taken each year is carefully determined based on an assessment of the level of tests needed to ensure reasonable industry compliance with both clean air and quality standards.

7.) Agree. Division will begin tracking the actions of municipalities when samples from retail establishments fail inspection.

8.) Agree. Division will monitor the inspection coverage provided by municipalities.

### **Specialized Weighing/Measuring Devices Inspected By Bureau**

The practice of adjusting the terminal rack meter before the fast test is conducted does not invalidate the test as stated on page 21 of the report. While not providing the most desirable data on the "as-found" condition, it is a technically correct method of adjusting the system.

The Division's "inform, warn and penalize" enforcement policy is documented in writing. It can be found in Section 4.6 of the Division's Quality Manual, issued 8/9/99. The primary goal of our inspection program is compliance. In all cases, we ensure that the devices are in compliance at the completion of our tests or they are removed from service until corrected. This is in complete agreement with our statutory responsibilities. This Bureau has never put a priority on collecting penalties unless there was no other means of gaining compliance. In general, companies whose devices fail are eager to get the device corrected and back into compliance since device errors can be both for and against the company's benefit. We are not aware of any companies that failed to comply with our repair orders.

### **Recommendations**

9.) Agree. Guidelines have been established to define significant failures. These limits represent variations that are large enough to be evident to the device user. Limits have been established and communicated to our field staff for LPG meters and terminal meters. We are still working on limits for vehicle scales. We are also working on upgrading the databases that are

used to record test results to allow us to review compliance by our field staff. The expected completion date is April, 2002.

10.) Agree. Guidelines specifying the circumstances in which LPG and Terminal Rack Meter test failures should be reported to the Municipal or State Director will be developed by January, 2002.

11.) Agree. This is a minor change in process and was communicated to all staff on November 1, 2001.

12.) Agree. Enforcement guidelines will be finalized by August 2002, in conjunction with the annual update of the Division's Quality Manual.

### **Reporting**

No comments.

### **Recommendations**

13.) Agree. For the 2001 annual report cycle a notification letter will be sent to the immediate supervisor of any Municipal Weights and Measures Director that does not submit the required annual report.

14.) Agree. Municipalities will be offered the option of filing their 2001 Annual Report electronically.

15.) Agree. Recommendation will be implemented for the 2001 annual report cycle. It is anticipated that comparative data will be available to municipalities in June 2002.