

THOMAS P. DINAPOLI  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

July 29, 2019

Mr. Richard Ball  
Commissioner  
Department of Agriculture and Markets  
10B Airline Drive  
Albany, NY 12235

Re: Oversight of Weights and Measures  
Programs  
Report 2019-F-11

Dear Commissioner Ball:

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 have followed up on the actions taken by officials of the Department of Agriculture and Markets (Department) to implement the recommendations contained in our audit report, *Oversight of Weights and Measures Programs* (Report [2016-S-98](#)), issued December 1, 2017.

**Background, Scope, and Objective**

In accordance with Section 220.5 of the New York Codes, Rules and Regulations, all commercial devices used to measure commodities that are sold based on weight, volume, or size are subject to inspection to ensure accuracy of measurement. Such devices include gas pumps, grocery/deli scales, livestock scales, and milk tanks. In addition, packaged goods such as foods, cleaning agents, paints, and yard/garden products are subject to inspection to ensure the package contains the amount of product indicated on the label. Furthermore, gasoline and diesel fuels sold for use in motor vehicles are subject to inspection to ensure they meet certain quality standards and are properly labeled for sale. All of these inspection activities are overseen by the Department as part of its weights and measures program.

The responsibility for performing inspections is shared between the Department's Bureau of Weights and Measures (Bureau) and 60 municipal weights and measures offices (57 counties and 3 cities). Generally, the municipalities perform inspections within their jurisdictions, while the Bureau performs inspections that require special equipment or expertise. As administrator of the State's weights and measures program, the Department is required to: supervise municipal activities, including inspections; provide training to municipalities and assist municipal officials when requested; and develop regulations,

procedures, and guidelines to ensure uniformity in the conduct of the inspections and the enforcement of the law and regulations.

Municipalities have the authority and are generally expected to: enforce State laws and regulations among vendors; regulate commercial weighing and measuring practices used by vendors; and investigate consumer and business complaints. Municipalities are required to maintain documentation supporting their weights and measures program activities and to submit an annual report detailing their results (e.g., devices inspected, pass/fail testing results).

The Department collects data and/or imports municipal data into three databases – annual reporting, complaints, and petroleum quality – for monitoring and tracking purposes. The Department uses the data to review each municipality's activities, identify improvement opportunities, and inform them of certain quality failures for follow-up. Based on the annual report data submitted by municipalities and compiled by the Department for 2018, approximately 161,300 weighing/measuring devices were used by more than 44,600 commercial establishments statewide. Gasoline and diesel fuel were distributed from about 150 terminals and sold from about 5,500 retail stations statewide.

Our initial report, covering the period April 1, 2014 to July 20, 2017, examined whether the Department adequately monitored and enforced weights and measures to ensure consumer confidence in products purchased in New York State. The audit found systemic issues with the quality of data the Department relies on to administer the State's weights and measures program. The Bureau did not have written procedures for standards of quality control or data utilization for its databases or a process for verifying data entry. Additionally, not all municipalities completed their mandated annual inspections, with municipal officials reporting that they needed training focused on reporting, workload prioritization, and record keeping to help them perform their duties more effectively. Most of the municipalities' processes for recording, maintaining, and completing inspection documentation were not fully automated. In addition, the petroleum quality database that maintains the results for all petroleum samples tested had design flaws that created redundancies and inefficiencies. Neither the Bureau nor the municipalities had written guidance or procedures clarifying if, when, or how they should follow up on petroleum failures.

Because of these and other weaknesses, we concluded that the Bureau needed to improve its monitoring of the municipalities' inspection activities by performing comprehensive analytics of the annual reporting and petroleum quality data, which would enable the Department to better assist municipalities in identifying problematic retail locations or distributors for inspection.

The objective of our follow-up was to assess the implementation, as of June 3, 2019, of the four recommendations in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

Department officials made significant progress in addressing the problems we identified in the initial audit. All four recommendations in the prior audit were implemented.

## **Follow-Up Observations**

### **Recommendation 1**

*Implement procedures to incorporate periodic data analysis to:*

- *Identify municipal functions that need improvement;*
- *Identify patterns, outliers, and/or areas of concern for petroleum quality testing; and*
- *Provide information to municipalities to assist them in managing allocation of their staff resources as effectively as possible.*

Status – Implemented

Agency Action – The Department has implemented procedures to perform periodic data analysis to identify areas of improvement, patterns, and quality concerns and to provide information to municipalities to assist in their operations. Department staff document any problems they identify and report them to municipal directors. Staff run queries of the petroleum quality database to identify quality failures (at both the retail and wholesale levels) and duplicate entries, and analyze other information such as the dates when samples are taken and received, samples by county/inspector, and results per establishment. Additionally, the Department holds semi-annual regional meetings with municipal directors covering current and developing issues, such as managing resources, cuts in personnel, testing frequencies and improvements, record keeping, professionalism, safety methods, and diversion techniques.

### **Recommendation 2**

*Provide additional training on administrative tasks, reporting, and workload prioritization to municipal inspectors and/or directors.*

Status – Implemented

Agency Action – The Department developed a record-keeping training program that includes best practices for administrative tasks and regulations and has distributed it to each individual municipal director or his/her designee. Also, the Department provided the training to all the municipalities between September 2017 and January 2018 and plans on providing it to all new directors throughout 2019. It has also discussed record keeping, reporting, and workload prioritization at its fall and spring regional meetings.

### **Recommendation 3**

*Develop and implement procedures for input, quality assurance, and utilization of the information in each of the Bureau's systems.*

Status – Implemented

Agency Action – The Department developed manuals for the use and maintenance of the petroleum quality and complaints systems. These manuals include instructions on how to input and maintain data, which helps ensure its quality. Additionally, the Department developed updated guidance for municipal directors to clarify how to complete the annual reports and help ensure consistent data, and updated the spreadsheet it provides to municipalities to ensure certain reported numbers are accurate.

#### **Recommendation 4**

*In conjunction with Office of Information Technology Services, develop controls within each system to prevent duplicative, erroneous, or incomplete information from being entered.*

Status – Implemented

Agency Action – The Department worked with the Office of Information Technology Services (ITS) to develop systems controls to prevent duplicative, erroneous, or incomplete information in the petroleum quality and complaints databases. For example, for the petroleum quality database, the Department and ITS: reduced the number of unnecessary records; adjusted certain user functions to streamline the usability of the system; and developed an edit to prevent the input of incorrect fuel types. Additionally, petroleum sample failures now carry over to the complaints database for follow-up inspection. The complaints database has been improved to check and warn users of duplicate entries. Users select establishments from automatically populated fields via a drop-down menu to reduce data entry errors.

The Department considered system edit checks for its Annual Reports database, but ultimately determined such checks were unnecessary. In lieu of system checks, the Department developed a macro within the database to directly import the annual reports data provided by municipalities, thus reducing data entry errors.

Major contributors to this report were Heather Pratt, Scott Heid, Michele Turmel, and Gayle Clas.

We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Brian Reilly, CFE, CGFM  
Audit Director