

Inspection and Licensing of  
Restaurants and Other Eateries:  
A Performance Audit  
of the Pennsylvania  
Department of Agriculture

November 2005

Pennsylvania Department of the Auditor General  
Jack Wagner, Auditor General

[inside front cover]

November 16, 2005

The Honorable Edward G. Rendell  
GOVERNOR  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

Dear Governor Rendell:

This report contains the results of the Department of the Auditor General's special performance audit of the Department of Agriculture's inspection and licensure of restaurants and other eateries for the period of January 1, 2002, through December 31, 2004. The audit was conducted pursuant to Section 402 of the Fiscal Code and in accordance with *Government Auditing Standards* as issued by the Comptroller General of the United States.

Our auditors found significant problems with the Department of Agriculture's performance in carrying out its mission to assure Pennsylvanians that the food they consume will meet the highest standards of food safety. Specifically, our major findings include the following:

1. Even though the Department of Agriculture may have inspected restaurants, bars/clubs, and similar food establishments before issuing their one-year licenses initially, it often failed to inspect those businesses the next year and, instead, renewed licenses blindly. *Patrons therefore had no assurances that such businesses met basic sanitation and food handling conditions required by law.*
2. When the Department of Agriculture did inspect restaurants and other food service businesses, it did not follow up to make sure that violations were corrected, it rarely sought fines, and it suspended or revoked no licenses. *Bad businesses therefore had little incentive to change, and their patrons were not afforded reasonable protection from health risks even though the Department of Agriculture knew that the risks were present.*
3. The Department of Agriculture did not readily provide the public with useful information about restaurants and other food service businesses that had violations. *Citizens thus could not easily counteract the Department's poor inspection follow-ups and weak enforcement attempts by getting enough information to make their own decisions about patronizing unclean or unsafe eating places.*
4. The Department of Agriculture had no procedures in place to monitor or coordinate the activities of all the local government entities (i.e., health departments in counties, cities, towns, townships, or boroughs) that oversee eating places in the Commonwealth on their own. *Restaurant patrons therefore could not look to a single source to ensure that all eating establishments in Pennsylvania were safe and clean.*

We also found that the state did not ensure that even the restaurants in the Capitol and other state buildings were licensed and inspected.

I have discussed this audit report with Secretary of Agriculture Dennis Wolff, who has responded with a pledge of cooperation. In fact, Secretary Wolff's staff has already begun to implement changes in response to our findings and has conducted itself with the utmost professionalism as we carried out our field work and developed our report. As I noted to you in my September 13, 2005, letter accompanying our audit report of the Department of Corrections' Pennsylvania Correctional Industries, this type of collaboration serves as an example of how government agencies can work together constructively.

I also bring to your attention the following legislative issue:

- The Eating and Drinking Places Law (Act 369 of 1945, as amended, which sets forth the primary authority for the state to oversee the inspection and licensure of eating and drinking places) is outdated and lacks specificity on some critical regulatory issues. For example, fines for violations have not been increased since the law's original enactment more than 60 years ago. In addition, the Department of Agriculture's oversight authority with respect to local health departments and other local government entities is vague. In fact, because of this vagueness, the Department of Agriculture has not taken the lead role in supervising the local entities, a condition that results in no assurances that local jurisdictions carry out their oversight of eating places uniformly, and in accordance with Act 369 and the Department of Agriculture's regulations.

Although the law has undergone few, if any, substantive amendments since its inception, Pennsylvania's population has grown by about 2.5 million, restaurants and other eateries play a more dominant role in our daily lives, and our nation's food supply is an increasing public security concern. It is absolutely vital for Pennsylvania to have one government agency at the state level with the necessary statutory oversight authority—and with the essential financial and staffing resources—to act as a single source to ensure that all eating establishments in Pennsylvania meet strong, uniform safety standards. Therefore, I urge that your Office of Legislative Affairs work closely with the appropriate committees of the Pennsylvania Senate and the Pennsylvania House of Representatives to enact legislation that better governs the licensure and inspection of eating and drinking places at both the state and local levels.

Auditors from this Department will follow up with the Department of Agriculture within 24 months to determine the status of our findings and recommendations. In the meantime, we are available to work with Department of Agriculture officials to provide technical advice and expertise as necessary to move forward.

Please contact me if we can answer any questions or be of further assistance.

Sincerely,

JACK WAGNER  
Auditor General

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## Results in Brief

*A license from the Pennsylvania Department of Agriculture does not mean that a restaurant or other eatery is necessarily safe and clean, or that it has been recently inspected.*

*New technology will help with the Department of Agriculture's problems, but better program management and greater accountability are needed, too.*

Consumers who see a license from the Department of Agriculture on the wall of a restaurant or other eatery in Pennsylvania are likely to believe that the food is safe, the place is clean, the equipment is sanitary, the employees practice good hygiene, and the state is vigilant in conducting inspections and following up on deficiencies.

Unfortunately, the license means no such thing. According to our special performance audit of the Department of Agriculture for the period of January 1, 2002, through December 31, 2004, the state's inspection and licensing of 17,597 eating places was not what it should be and, in fact, was worse than we might have expected.

Not everything was bad, however. The Department of Agriculture staff—notably inspectors in the field, who contend with computer shortcomings and workloads that make their jobs difficult—welcomed our audit as a tool to hasten change. Moreover, in his response to our audit, the Secretary of Agriculture called our findings valid and committed to make improvements. Some of those improvements, said the Secretary, were already set in motion based on the Department's own recognition of deficiencies. **But we caution that the most widely touted improvement—a new information management system—will not by itself be a cure-all.**

The Secretary of Agriculture communicated this same cautiousness in a memorandum to the Department's inspection and licensing staff on November 8, 2005, just prior to this audit report's release. In the memorandum, which addressed the performance audit and listed some immediate corrective actions in response to our findings, the Secretary said this:

The purpose of the Performance Audit was to provide an independent assessment of the Department's responsibilities under the Public Eating and Drinking Places Law. It is expected that the findings and subsequent corrective actions will help improve [the Pennsylvania Department of Agriculture's] operations and public

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accountability. While we have taken some very positive steps recently with the design and planned deployment of the [new information management system], which will allow us to better manage the licensing and inspection functions of the Bureau and also address some of the audit findings, there are still some processes and program management deficiencies in the audit which need to be corrected.

In short, the Department of Agriculture must focus as much on program management and accountability as on program technology. These areas—program management and accountability—were only partially addressed in the Department’s official 14-page written response to us, which appears in Appendix C that begins on page 62. The response illustrates less introspection than the Secretary’s memorandum referenced above and attributes the Department’s problems primarily to easily recognized “deficiencies in the current Food Safety law and information management system.” Little is said about deficiencies in performance by management, which are more difficult to acknowledge.

*The most basic requirements of state law are that the Department of Agriculture must inspect an eating place before issuing an annual license and then inspect the eating place again prior to renewing that license. But those requirements were not met.*

For change to occur, the Department of Agriculture must hold itself accountable for not having carried out the requirements of state law in the first place. At their most basic, these requirements mean an eatery must be inspected before issuing an annual license and then inspected again before renewing that license. Looking at the Department’s written response and its discussion about federal standards, readers might think that the Department, although not meeting state requirements, at least followed the federal model. Yet federal standards about inspection frequency are even more stringent (at least twice a year for restaurants) than the state’s once-yearly requirements.

Whatever the case, if the Department of Agriculture believes that federal standards are best or that state requirements should be changed or strengthened, then the Department must be proactive in seeking to amend existing state law while, in the meantime, upholding it. That balance is what program management and accountability are about.

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*During our audit period, the Department of Agriculture was responsible for inspecting and licensing nearly 18,000 restaurants and other such eateries. These were just part of almost 49,000 food-handling businesses in total that the Department regulated.*

The idea for this audit was raised by our audit staff when three people died and more than 550 others became ill from Hepatitis A traced to a Chi Chi's restaurant in Beaver County near Pittsburgh in November 2003. Then, as now, there was no single government entity to license and inspect eating places. Instead, oversight of eateries is spread out among regional health departments in 10 counties and cities, and local health departments in nearly 200 cities, towns, townships, and boroughs. The Department of Agriculture fills in for counties and municipalities that elect not to license and inspect eating places on their own.

Under the preceding scenario, the Department was responsible during our audit period not only for the inspection and licensure of 17,597 restaurants, bars/clubs, and retailers that served food and drink, but also for much more. Specifically, including the 17,597 businesses just described, the Department regulated 48,828 food-handling businesses in total—either by issuing licenses, seeking registrations, assigning permits, conducting inspections, or performing some combination of those duties.

All the while, in the Department of Agriculture's division that carried out these responsibilities, there were no more than 57 field inspectors, 7 regional supervisors, and 5 headquarters-based management personnel. All were managed by a bureau director with responsibility for about 50 employees in 3 other divisions as well. Senior-level oversight was provided by a deputy secretary, an executive deputy secretary, and ultimately the Secretary of Agriculture. (See Appendix A for an organization chart.)

It is clear that the Department of Agriculture's job is enormous. Even more important, the Department's mission is critical—to assure Pennsylvanians that the food they consume will meet the highest standards of food safety. Our findings show that the Department could not make that assurance:

- **Finding 1:** Even though the Department of Agriculture may have inspected restaurants, bars/clubs, and similar food establishments before issuing licenses initially, it often failed to inspect them during the next year prior to renewal and, instead, renewed licenses blindly. Patrons therefore had no

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*Our auditors identified 5 findings and developed 20 recommendations to help the Department of Agriculture better carry out its critical mission to assure Pennsylvanians that the food they eat will meet the highest standards of food safety.*

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assurances that such businesses met even the most basic sanitation and food handling conditions required by law.

- **Finding 2:** When the Department of Agriculture did inspect restaurants and other food service businesses and found violations during our audit period, it did not follow up to make sure that violations were corrected, it rarely sought fines, and it suspended or revoked no licenses. Bad businesses therefore had little incentive to change, and their patrons were not afforded reasonable protection from health risks even though the Department of Agriculture knew that the risks were present.
- **Finding 3:** The Department of Agriculture did not readily provide the public with useful information about restaurants and other food service businesses with violations. Citizens thus could not easily counteract the Department's poor inspection follow-ups and weak enforcement attempts by getting enough information to make their own decisions about patronizing unclean or unsafe eating places.
- **Finding 4:** The Department of Agriculture had no procedures in place to monitor or coordinate the activities of all the local government entities that oversee eating places in the Commonwealth. Restaurant patrons therefore could not look to a single source to ensure that all eating establishments in Pennsylvania were safe and clean.
- **Finding 5:** The Department of Agriculture failed to ensure that restaurants operating in the state's own backyard were licensed and inspected—specifically, restaurants in the State Capitol itself and in other state-owned or state-leased office buildings. These restaurants serve thousands of people daily who visit, work in, or represent state government, including Pennsylvania's lawmakers, yet the state did not abide by its own laws to ensure these eating places were safe and clean.

We also make a total of 20 recommendations that accompany the 5 findings. Following each finding, we have summarized the Department of Agriculture's response and included our comments.

## Introduction and Background

During our audit period of January 1, 2002, through December 31, 2004, the Pennsylvania Department of Agriculture regulated nearly 49,000 food handlers as shown below. It licensed 26,666 of those businesses, such as restaurants, also as shown.<sup>1</sup> There were far more than 26,666 restaurants/eateries in the state—the total number is not known—but the rest were licensed by local governments that are not the subject of this audit—health departments in 10 counties or cities<sup>2</sup> and other health authorities in 196 cities, towns, townships, or boroughs.<sup>3</sup> This audit evaluates the performance of only the Department of Agriculture but also shows why that agency should coordinate the others.

48,828 food businesses licensed or registered by Department of Agriculture as of September 2004		Primary duties of Department of Agriculture
26,666 Licensed	<ul style="list-style-type: none"> <li>▪ 17,597 eateries (8,887 restaurants; 5,132 bars/clubs; and 3,578 retailers serving food/drink)</li> </ul>	Must inspect before business opens and issue 1-year license if business passes inspection. Must inspect again before renewing license.
	<ul style="list-style-type: none"> <li>▪ 4,840 other food and drink businesses such as caterers and recreational facilities</li> </ul>	
	<ul style="list-style-type: none"> <li>▪ 4,229 frozen dessert places. Most have two licenses: eatery (as above) and frozen dessert.<sup>4</sup></li> </ul>	Must license initially and then test frozen dessert monthly for bacteria.
18,548 Registered	<ul style="list-style-type: none"> <li>▪ 5,538 food manufacturing firms</li> </ul>	Must gather registration information and inspect periodically, except for about half of the retail food stores that are just <i>registered</i> by the state but <i>inspected</i> by local governments.
	<ul style="list-style-type: none"> <li>▪ 2,052 warehouses</li> </ul>	
	<ul style="list-style-type: none"> <li>▪ 10,958 retail food stores</li> </ul>	
3,614 Other	<ul style="list-style-type: none"> <li>▪ 2,734 schools</li> </ul>	Must inspect twice yearly.
	<ul style="list-style-type: none"> <li>▪ 600 camps and summer food sites</li> </ul>	Must inspect periodically. Some of the labor camps also get permits.
	<ul style="list-style-type: none"> <li>▪ 280 seasonal farm labor camps</li> </ul>	

*Numbers from the Pennsylvania Department of Agriculture*

<sup>1</sup> The state’s authority to oversee most of the 26,666 eating places is provided by (1) the Public Eating and Drinking Places Law (Act 369 of 1945, as amended), 35 P.S. § 655.1 *et seq.*, and its regulations in (2) the Food Code, 7 Pa. Code § 46.1 *et seq.* Originally, the Department of Health was the regulator and, later, the Department of Environmental Resources. In 1994, oversight was transferred to the Department of Agriculture.

<sup>2</sup> Pennsylvania’s Local Health Administration Law (Act 315 of 1951, as amended), 16 P.S. § 12001 *et seq.*, allows counties or cities to create health departments that, among other duties, oversee eateries. Not accountable to the Department of Agriculture, ten cities/counties had such “Act 315” departments as of March 2004 (see pages 4-7). A few municipalities within the ten cities/counties chose to oversee eateries on their own.

<sup>3</sup> Under Act 369 (see footnote 1), 196 towns, boroughs, townships, or cities elected that they—rather than the Department of Agriculture or an “Act 315” department (see footnote 2)—should carry out restaurant oversight (as of March 2004; see pages 4-7).

<sup>4</sup> Making and selling frozen desserts falls under the state’s Frozen Dessert Law, 31 P.S. § 417-1 *et seq.*

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Significant testing and analysis for this audit focused on the group of 17,597 businesses made up of (1) restaurants, (2) bars/clubs, and (3) retail stores that served food and drink. However, any discussion of that testing and analysis is not complete without placing it in the context of the Department of Agriculture's duties related to all the businesses it regulated, not just the 17,597. Therefore, throughout the report, we often include information about the entire population of nearly 49,000 businesses as well.

Regarding the 17,597 licensed restaurants, bars/clubs, and retail stores that served food and drink, the Public Eating and Drinking Places Law is clear about the Department of Agriculture's responsibilities for these businesses:

1. Proprietors cannot operate a public eating and drinking establishment without first obtaining a license for that establishment.
2. The Department of Agriculture is authorized to refuse to issue a license to applicants if their premises or equipment do not meet the requirements of the law or of the rules and regulations of the Department.
3. When the Department of Agriculture issues a license, it is valid for one year. The Department is required to inspect an establishment before renewing that one-year license.
4. The Department of Agriculture may suspend or revoke a license for any violation of the law or its regulations, or for any violation of other laws relating to public health that concerns public eating and drinking places. Violations of law are also punishable through fines imposed by magisterial district judges.
5. The Department of Agriculture should make reasonable rules and regulations as necessary to carry out the law.

It is worth repeating that the Department of Agriculture has oversight responsibilities for the food businesses only in cases (1) where there is no local government entity that licenses and inspects these businesses *or* (2) where a local government entity

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elects not to license and inspect them. To aid readers in understanding which locations carried out their own oversight during our audit period, the next four pages list jurisdictions that utilized *local* government entities—*not* the Department of Agriculture—to license and inspect restaurants and other food service businesses.

<b><u>Local</u> oversight of eating and drinking places was provided in 206 jurisdictions bulleted here. Otherwise, the <u>state</u>—via the Department of Agriculture—provided oversight.</b>	
<b>Adams (6) *</b>	<i>Adams County did not provide local oversight.</i>
<b>Allegheny (4)</b>	<ul style="list-style-type: none"> <li>▪ Most of Allegheny County**</li> <li>▪ Churchill Borough</li> <li>▪ Edgeworth Borough</li> <li>▪ Sewickley Heights Borough</li> </ul>
<b>Armstrong (4)</b>	<ul style="list-style-type: none"> <li>▪ Ford City Borough</li> </ul>
<b>Beaver (4)</b>	<ul style="list-style-type: none"> <li>▪ Aliquippa Borough</li> <li>▪ Beaver Borough</li> <li>▪ Conway Borough</li> <li>▪ Rochester Borough</li> <li>▪ Ambridge Borough</li> <li>▪ Beaver Falls City</li> <li>▪ Monaca Borough</li> </ul>
<b>Bedford (5)</b>	<i>Bedford County did not provide local oversight.</i>
<b>Berks (7)</b>	<ul style="list-style-type: none"> <li>▪ Birdsboro Borough</li> <li>▪ Mt. Penn Borough</li> <li>▪ Reading City</li> <li>▪ Boyertown Borough</li> <li>▪ Muhlenberg Township</li> </ul>
<b>Blair (5)</b>	<ul style="list-style-type: none"> <li>▪ Altoona City</li> <li>▪ Tyrone Borough</li> </ul>
<b>Bradford (3)</b>	<i>Bradford County did not provide local oversight.</i>
<b>Bucks (7)</b>	<ul style="list-style-type: none"> <li>▪ All of Bucks County **</li> </ul>
<b>Butler (4)</b>	<ul style="list-style-type: none"> <li>▪ Butler City</li> </ul>
<b>Cambria (5)</b>	<ul style="list-style-type: none"> <li>▪ Johnstown Borough</li> <li>▪ Westmont Borough</li> <li>▪ Southmont Borough</li> </ul>
<b>Cameron (2)</b>	<i>Cameron County did not provide local oversight.</i>
<b>Carbon (3)</b>	<ul style="list-style-type: none"> <li>▪ Bowmanstown Borough</li> <li>▪ Lansford Borough</li> <li>▪ Palmerton Borough</li> <li>▪ Jim Thorpe Borough</li> <li>▪ Lehighon Borough</li> <li>▪ Weatherly Borough</li> </ul>
<b>Centre (5)</b>	<ul style="list-style-type: none"> <li>▪ Ferguson Borough</li> <li>▪ State College Borough</li> <li>▪ Patton Township</li> </ul>
<b>Chester (7)</b>	<ul style="list-style-type: none"> <li>▪ All of Chester County **</li> </ul>
<b>Clarion (1)</b>	<i>Clarion County did not provide local oversight.</i>
<b>Clearfield (5)</b>	<i>Clearfield County did not provide local oversight.</i>
<b>Clinton (2)</b>	<ul style="list-style-type: none"> <li>▪ Lock Haven City</li> </ul>
<b>Columbia (2)</b>	<ul style="list-style-type: none"> <li>▪ Millville Borough</li> </ul>
<b>Crawford (1)</b>	<ul style="list-style-type: none"> <li>▪ Meadville City</li> <li>▪ Titusville City</li> </ul>
<b>Cumberland (6)</b>	<ul style="list-style-type: none"> <li>▪ Camp Hill Borough</li> <li>▪ Lemoyne Borough</li> <li>▪ Mechanicsburg Borough</li> <li>▪ Upper Allen Township</li> </ul>

\* Region numbers are in (.). The Department of Agriculture divides the state into 7 regions and assigns inspectors by region.

\*\* These cities or counties operated under Act 315 of 1951, as amended. See footnotes 2 and 3. Data as of March 2004

<i>continued</i>		
<b>Local oversight of eating and drinking places was provided in 206 jurisdictions bulleted here. Otherwise, the state—via the Department of Agriculture—provided oversight.</b>		
<b>Dauphin (6) *</b>	<ul style="list-style-type: none"> <li>▪ Harrisburg City</li> <li>▪ Lower Paxton Township</li> <li>▪ Paxtang Borough</li> <li>▪ Susquehanna Township</li> </ul>	<ul style="list-style-type: none"> <li>▪ Hummelstown Borough</li> <li>▪ Lykens Borough</li> <li>▪ Swatara Township</li> </ul>
<b>Delaware (7)</b>	<ul style="list-style-type: none"> <li>▪ Aldan Borough</li> <li>▪ Brookhaven Borough</li> <li>▪ Chester Township</li> <li>▪ Collingdale Borough</li> <li>▪ Darby Township</li> <li>▪ Eddystone Borough</li> <li>▪ Glenolden Borough</li> <li>▪ Lansdowne Borough</li> <li>▪ Marcus Hook Borough</li> <li>▪ Media Borough</li> <li>▪ Millbourne Borough</li> <li>▪ Nether Providence Twp</li> <li>▪ Norwood Borough</li> <li>▪ Prospect Park Borough</li> <li>▪ Ridley Township</li> <li>▪ Rose Valley Borough</li> <li>▪ Sharon Hill Borough</li> <li>▪ Swarthmore Borough</li> <li>▪ Trainer Borough</li> <li>▪ Upper Chichester Twp</li> <li>▪ Yeadon Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Aston Township</li> <li>▪ Chester City</li> <li>▪ Clifton Heights Borough</li> <li>▪ Colwyn Borough</li> <li>▪ East Lansdowne Borough</li> <li>▪ Folcroft Borough</li> <li>▪ Haverford Township</li> <li>▪ Lower Chichester Twp</li> <li>▪ Marple Township</li> <li>▪ Middletown Township</li> <li>▪ Morton Borough</li> <li>▪ Newtown Square Twp</li> <li>▪ Parkside Borough</li> <li>▪ Radnor Township</li> <li>▪ Ridley Park Borough</li> <li>▪ Rutledge Borough</li> <li>▪ Springfield Township</li> <li>▪ Tinicum Township</li> <li>▪ Upland Borough</li> <li>▪ Upper Darby Township</li> </ul>
<b>Elk (1)</b>	<ul style="list-style-type: none"> <li>▪ Ridgway Borough</li> </ul>	
<b>Erie (1)</b>	<ul style="list-style-type: none"> <li>▪ All of Erie County **</li> </ul>	
<b>Fayette (4)</b>	<ul style="list-style-type: none"> <li>▪ Connellsville Borough</li> <li>▪ Uniontown City</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ohiopyle Borough</li> </ul>
<b>Forest (1)</b>	<i>Forest County did not provide local oversight.</i>	
<b>Franklin (6)</b>	<ul style="list-style-type: none"> <li>▪ Chambersburg Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Waynesboro Borough</li> </ul>
<b>Fulton (5)</b>	<i>Fulton County did not provide local oversight.</i>	
<b>Greene (4)</b>	<i>Greene County did not provide local oversight.</i>	
<b>Huntingdon (5)</b>	<ul style="list-style-type: none"> <li>▪ Huntingdon Borough</li> </ul>	
<b>Indiana (4)</b>	<i>Indiana County did not provide local oversight.</i>	

\* Region numbers are in (.). The Department of Agriculture divides the state into 7 regions and assigns inspectors by region.

\*\* These cities or counties operated under Act 315 of 1951, as amended. See footnotes 2 and 3. Data as of March 2004

<i>continued</i>		
<b>Local oversight of eating and drinking places was provided in 206 jurisdictions bulleted here. Otherwise, the state—via the Department of Agriculture—provided oversight.</b>		
<b>Jefferson (1) *</b>	<ul style="list-style-type: none"> <li>▪ Brockway Borough</li> <li>▪ Reynoldsville Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Brookville Borough</li> </ul>
<b>Juniata (5)</b>	<i>Juniata County did not provide local oversight.</i>	
<b>Lackawanna (3)</b>	<ul style="list-style-type: none"> <li>▪ Dunmore Borough</li> <li>▪ Olyphant Borough</li> <li>▪ Taylor Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Moosic Borough</li> <li>▪ Scranton City</li> <li>▪ Vandling Borough</li> </ul>
<b>Lancaster (6)</b>	<ul style="list-style-type: none"> <li>▪ Columbia Borough</li> <li>▪ Ephrata Borough</li> <li>▪ Mount Joy Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Elizabethtown Borough</li> <li>▪ Lancaster City</li> </ul>
<b>Lawrence (4)</b>	<ul style="list-style-type: none"> <li>▪ Ellwood City Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ New Castle City</li> </ul>
<b>Lebanon (6)</b>	<ul style="list-style-type: none"> <li>▪ Cornwall Borough</li> <li>▪ Palmyra Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lebanon City</li> </ul>
<b>Lehigh (7)</b>	<ul style="list-style-type: none"> <li>▪ Allentown City **</li> <li>▪ Catasauqua Borough</li> <li>▪ Coplay Borough</li> <li>▪ Fountain Hill Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ Bethlehem City **</li> <li>▪ Coopersburg Borough</li> <li>▪ Emmaus Borough</li> <li>▪ Slatington Borough</li> </ul>
<b>Luzerne (3)</b>	<ul style="list-style-type: none"> <li>▪ Avoca Borough</li> <li>▪ Forty Fort Borough</li> <li>▪ Hazleton City</li> <li>▪ Larksville Borough</li> <li>▪ Pittston City</li> <li>▪ Sugar Notch Borough</li> <li>▪ Wilkes-Barre City **</li> </ul>	<ul style="list-style-type: none"> <li>▪ Dupont Borough</li> <li>▪ Hanover Township</li> <li>▪ Kingston Borough</li> <li>▪ Nanticoke City</li> <li>▪ Pittston Township</li> <li>▪ Plymouth Borough</li> <li>▪ West Pittston Borough</li> </ul>
<b>Lycoming (2)</b>	<ul style="list-style-type: none"> <li>▪ Hughesville Borough</li> <li>▪ Montoursville Borough</li> <li>▪ Williamsport City</li> </ul>	<ul style="list-style-type: none"> <li>▪ Montgomery Borough</li> <li>▪ Muncy Borough</li> </ul>
<b>McKean (1)</b>	<ul style="list-style-type: none"> <li>▪ Bradford City</li> </ul>	<ul style="list-style-type: none"> <li>▪ Kane Borough</li> </ul>
<b>Mercer (1)</b>	<ul style="list-style-type: none"> <li>▪ Farrell City</li> <li>▪ Sharon City</li> </ul>	<ul style="list-style-type: none"> <li>▪ Hermitage City</li> <li>▪ Sharpsville Borough</li> </ul>
<b>Mifflin (5)</b>	<i>Mifflin County did not provide local oversight.</i>	
<b>Monroe (3)</b>	<ul style="list-style-type: none"> <li>▪ Stroudsburg Borough</li> </ul>	<ul style="list-style-type: none"> <li>▪ East Stroudsburg Boro</li> </ul>
<b>Montgomery (7)</b>	<ul style="list-style-type: none"> <li>▪ Montgomery County **</li> <li>▪ Bridgeport Borough</li> <li>▪ Jenkintown Borough</li> <li>▪ Lower Merion Township</li> <li>▪ Upper Dublin Township</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ambler Borough</li> <li>▪ Cheltenham Township</li> <li>▪ Lansdale Borough</li> <li>▪ Narberth Borough</li> </ul>
<b>Montour (2)</b>	<ul style="list-style-type: none"> <li>▪ Danville Borough</li> </ul>	

\* Region numbers are in (. The Department of Agriculture divides the state into 7 regions and assigns inspectors by region.

\*\* These cities or counties operated under Act 315 of 1951, as amended. See footnotes 2 and 3. Data as of March 2004

<i>continued</i>	
<b>Local oversight of eating and drinking places was provided in 206 jurisdictions bulleted here. Otherwise, the state—via the Department of Agriculture—provided oversight.</b>	
<b>Northampton (7) *</b>	<ul style="list-style-type: none"> <li>▪ Bath Borough</li> <li>▪ Hellertown Borough</li> <li>▪ Northampton Borough</li> <li>▪ West Easton Borough</li> <li>▪ Easton City</li> <li>▪ North Catasauqua Boro</li> <li>▪ Portland Borough</li> <li>▪ Wilson Borough</li> </ul>
<b>Northumberland (2)</b>	<ul style="list-style-type: none"> <li>▪ Kulpmont Borough</li> <li>▪ Mt. Carmel Borough</li> <li>▪ Northumberland Borough</li> <li>▪ Shamokin City</li> <li>▪ Sunbury City</li> </ul>
<b>Perry (6)</b>	<i>Perry County did not provide local oversight.</i>
<b>Philadelphia (7)</b>	▪ All of Philadelphia County **
<b>Pike (3)</b>	<i>Pike County did not provide local oversight.</i>
<b>Potter (2)</b>	<i>Potter County did not provide local oversight.</i>
<b>Schuylkill (7)</b>	<ul style="list-style-type: none"> <li>▪ Ashland Borough</li> <li>▪ Frackville Borough</li> <li>▪ Minersville Borough</li> <li>▪ Port Carbon Borough</li> <li>▪ Ringtown Borough</li> <li>▪ Shenandoah Borough</li> <li>▪ Tamaqua Borough</li> <li>▪ Coaldale Borough</li> <li>▪ Mahanoy City Borough</li> <li>▪ Pine Grove Borough</li> <li>▪ Pottsville City</li> <li>▪ Schuylkill Haven Boro</li> <li>▪ St. Clair Borough</li> </ul>
<b>Snyder (2)</b>	<i>Snyder County did not provide local oversight.</i>
<b>Somerset (5)</b>	<i>Somerset County did not provide local oversight.</i>
<b>Sullivan (3)</b>	<i>Sullivan County did not provide local oversight.</i>
<b>Susquehanna (3)</b>	<i>Susquehanna County did not provide local oversight.</i>
<b>Tioga (2)</b>	<i>Tioga County did not provide local oversight.</i>
<b>Union (2)</b>	<i>Union County did not provide local oversight.</i>
<b>Venango (1)</b>	▪ Franklin City
<b>Warren (1)</b>	▪ Warren City
<b>Washington (4)</b>	<ul style="list-style-type: none"> <li>▪ Canonsburg Borough</li> <li>▪ Roscoe Borough</li> <li>▪ Monongahela City</li> </ul>
<b>Wayne (3)</b>	<i>Wayne County did not provide local oversight.</i>
<b>Westmoreland (4)</b>	<ul style="list-style-type: none"> <li>▪ Arnold City</li> <li>▪ Jeannette City</li> <li>▪ Monessen City</li> <li>▪ New Kensington City</li> <li>▪ West Leechburg Boro</li> <li>▪ Greensburg City</li> <li>▪ Lower Burrell City</li> <li>▪ New Alexandria Borough</li> <li>▪ Trafford Borough</li> </ul>
<b>Wyoming (3)</b>	<i>Wyoming County did not provide local oversight.</i>
<b>York (6)</b>	<ul style="list-style-type: none"> <li>▪ Hanover Borough</li> <li>▪ York City **</li> <li>▪ Spring Grove Borough</li> </ul>

\* Region numbers are in (. The Department of Agriculture divides the state into 7 regions and assigns inspectors by region.

\*\* These cities or counties operated under Act 315 of 1951, as amended. See footnotes 2 and 3. Data as of March 2004

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## Objectives and Methodology

The Department of the Auditor General conducted this performance audit in order to provide an independent assessment of the Pennsylvania Department of Agriculture, specifically as it performed its role as defined under the Public Eating and Drinking Places Law. Our expectation is that the findings presented here will improve public accountability and facilitate corrective action where necessary. Accordingly, we developed the following general audit objectives:

- **Licensing** - Determine if the Department of Agriculture properly licensed the nearly 18,000 restaurants, bars/clubs, and retailers that were under its jurisdiction.
- **Inspections** - Determine if the Department of Agriculture inspected establishments as required.
- **Enforcement** - Determine if the Department of Agriculture effectively utilized available enforcement options when eating establishments violated standards of cleanliness and food handling.
- **Recordkeeping** - Determine if the Department of Agriculture adequately maintained and made available licensing and inspection data, and if the Department adequately controlled and documented its collection of licensing fees.
- **Coordination with other regulators** - Determine if the Department of Agriculture took steps to coordinate the information collected and the procedures used by local governments that carried out their own oversight. This coordination is not specifically required under the Public Eating and Drinking Places Law, but it is not prohibited.

Auditors addressed these objectives by interviewing officials from the Department of Agriculture as well as from other state and local agencies responsible for food safety oversight; reviewing pertinent laws, regulations, policies, and procedures; documenting the Department's licensing, inspection, and enforcement processes; observing inspections; conducting tests and performing analyses on samples of establishments and/or inspections selected from the Department's records; and reviewing agreements between the Department and local agencies.

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Unless otherwise indicated, our audit covers the activities of the Department of Agriculture from January 1, 2002, through December 31, 2004. We completed most of our fieldwork by June 8, 2005, but continued with follow-up questions and research through October 19, 2005. We provided a draft report to the Department of Agriculture on October 26, 2005, and received written comments from the Department on November 9, 2005. The relevant comments are reproduced in the appendix to this report.

## Findings

We developed **5 findings** during our review of the Department of Agriculture's performance for the audit period, and we present **20 recommendations** to address the issues we identified.

Please note that we have included time frames for the implementation of our recommendations, and that we intend to follow up within the next 24 months to determine the status of the findings. In so doing, we will work collaboratively with the Department to meet an important government auditing standard that promotes government accountability:

Providing continuing attention to significant findings and recommendations is important to ensure that the benefits of audit work are realized. Ultimately, the benefits of audit work occur when officials of the audited entity take meaningful and effective corrective action in response to the auditors' findings and recommendations. Officials of the audited entity are responsible for resolving audit findings and recommendations directed to them and for having a process to track their status. If the audited entity does not have such a process, auditors may wish to establish their own process.<sup>5</sup>

At the time of our follow-up, we will determine a subsequent course of action. For example, we may issue a status update jointly with the audited entity, issue an update independently, or conduct a new audit entirely.

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<sup>5</sup> Standard 7.30, *Government Auditing Standards*, 2003 revision, U.S. Government Accountability Office.

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## Finding 1

**Even though the Department of Agriculture may have inspected restaurants, bars/clubs, and similar food establishments before issuing licenses initially, it often failed to inspect them during the next year prior to renewal and, instead, renewed licenses blindly. Patrons therefore had no assurances that such businesses met even the most basic sanitation and food handling conditions required by law.**

*Restaurant licenses were renewed blindly—that is, with no inspection and with no checks to see if cited violations had been corrected. In fact, some restaurants were not inspected for years.*

As referenced in the introduction and background of this report, state law requires the Pennsylvania Department of Agriculture to license and inspect restaurants and other eating and drinking places that are located in local jurisdictions which do not themselves perform those duties.

In summary, state law sets forth the following:

- It is unlawful for persons to operate an eating and drinking place without first obtaining a license.<sup>6</sup>
- No license should be issued until an inspection of the premises has found them to be adequate for the protection of public health.<sup>7</sup> Inspectors look, for example, at cleanliness, food handling and storage, and food temperatures.
- Licenses, which are granted for a 1-year period, can be renewed if an inspection by the Department of Agriculture determines that specific public health conditions are fulfilled.<sup>8</sup>

Although Department of Agriculture officials were unable to segregate first-time licensees from the others for auditors to test, the officials maintained that they did carry out the initial inspections as required. If such was indeed the case, patrons of restaurants during that first year of operation could be assured that the businesses met the requirements of at least one inspection. During the restaurants' second year and subsequent years, however, patrons had no such assurance.

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<sup>6</sup> 35 P.S. § 655.2.

<sup>7</sup> 35 P.S. § 655.2.

<sup>8</sup> 35 P.S. § 655.4.

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This finding takes into account numerous conditions that our auditors documented through review, observation, or interview:

**1. Renewal licenses were issued blindly and in violation of law.**

Licenses for restaurants, bars/clubs, and retail stores that serve food and drink are issued for a 1-year period, and the law requires the Department of Agriculture to inspect those businesses before renewing their license. For the renewal process during our audit period, the Department's computer system generated a renewal application to each licensed food establishment 45 days before the existing license expired. The application instructed the business owner to sign and return the application with the renewal fee of \$82.<sup>9</sup>

When the Department of Agriculture's Harrisburg headquarters received the application, Department personnel checked to see if it was signed and included the fee. If so, the personnel simply sent out the license. *They did not check to see whether or not the establishment was inspected, nor did they verify whether any previously cited violations were corrected.* In fact, Department of Agriculture officials freely acknowledged that it was standard practice to renew licenses without first performing an inspection. Furthermore, officials said that only in rare cases were licenses put on hold, and then only when inspectors notified headquarters to do so because—mostly by chance—they were performing an inspection or investigating a complaint at the time of renewal.

To determine how this blind renewal of licenses worked in specific cases, we reviewed the license and inspection histories of 40 randomly selected restaurants, bars/clubs, and retail businesses that served food and drink. During the period from January 2001 through October 2004, a period of nearly four years, **the Department of Agriculture renewed licenses for 24 of the 40 businesses—that's 60 percent—at**

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<sup>9</sup> The fees that the Department of Agriculture is authorized to charge for the licensure and inspection of eating and drinking places were most recently increased through Act 47 of 2003 (71 P.S. § 240.2A).

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**least once, and sometimes twice, without ever visiting the business to inspect it** for proper food handling and cleanliness as required. Further analysis shows that, of the 40 businesses, 18 were allowed to operate an average of 20 months between inspections. Those same 18, when finally inspected, were cited for 65 violations in total—13 of which were considered critical, as follows:

- 4 citations for improper toilet and/or hand washing facilities
- 2 citations for the presence of rodents and/or insects
- 2 citations for potentially hazardous food not meeting temperature requirements
- 2 citations for unsafe water
- 1 citation for food spoilage
- 1 citation for improper hand washing and/or cleanliness
- 1 citation for deficient sewage and waste water disposal

**2. The Department wrongly employed an inspection prioritization schedule that circumvented the law’s requirement to inspect businesses before renewing their 1-year license.**

Auditors expected to see an inspection schedule for eating and drinking places that was based on annual inspections. That expectation was based on the facts, again, that (a) licenses for restaurants, bars/clubs, and retail stores serving food and drink are issued for a 1-year period, and (b) the law requires the Department of Agriculture to inspect establishments before renewing their 1-year license. Instead, the Department planned its inspections based on a “prioritization” system that did not comply with the law’s requirement and, in fact, circumvented it.

The circumvention worked like this: Inspectors were instructed to use their professional judgment to schedule visits only to some licensed establishments yearly; other establishments could be scheduled for inspections once every

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18 months or even once every 2 years.<sup>10</sup> This faulty scheduling system was based on inspector-assigned priority codes of I, II, or III. Specifically, priority code I meant that the business should be scheduled for once-yearly inspections; priority code II, once every 18 months; priority code III, once every 2 years.

Although priority coding might have been well-intentioned (the Department of Agriculture’s instruction manual for inspectors says that a priority code of I should be assigned to any establishment that maintains, serves, or sells potentially hazardous foods, which should mean that *all* restaurants, bars/clubs, and retail places serving food and drink would receive that code and therefore be scheduled for yearly inspections), the coding did not work that way in practice. **In fact, when we looked at histories for the 5,225 restaurants and bars/clubs that the Department of Agriculture inspected during the first 6 months of 2004, we found that approximately half were coded priorities II and III. Those codes—more appropriately termed “mis-codes”—meant that the Department actually planned not to inspect most of the licensed restaurants and bars/clubs before renewing their 1-year license.**

A priority system that extends inspection intervals beyond 1 year should not even exist for restaurants, bars/clubs, and other food places that serve potentially hazardous food and drink. The law is clear that these entities must be inspected before their 1-year license is renewed. When auditors brought this issue to the attention of Department officials, the officials explained that the coding system was originally intended for use in prioritizing inspection schedules for registered (not licensed) facilities such as warehouses, which are not necessarily inspected every year.<sup>11</sup> Although officials

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<sup>10</sup> It is critical to make the distinction here between inspections that were scheduled and inspections that were actually made. Our discussion at this point in the narrative relates only to inspections that were scheduled. On the next page, we will explain that most of the scheduled inspections were not actually made.

<sup>11</sup> Because our audit objectives did not include evaluating the Department’s oversight of warehouses and other facilities registered (as opposed to licensed) under another state law—The Food Act (Act 70 of 1994, as amended), 31 P.S. § 20.1 *et seq.*—we did not assess whether the prioritization schedule was appropriate for such registrants or whether it was followed for those registrants.

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did not propose eliminating the coding system for the annual licensees, the officials did acknowledge that the coding system should not apply to those entities and was used in part to alleviate inspection backlogs.

**3. Among the 48,828 food businesses in total regulated by the Department of Agriculture, there were nearly 9,000 that were not inspected for up to 2 years or more.**

As noted in footnote 10, there is a distinction between inspections scheduled and inspections made. When we looked at the latter, we found that, as of mid-2004, there were 8,996 licensed and registered establishments—out of a population of about 49,000—that had not been inspected for up to 2 years or more. (The chart on page 1 shows the types of businesses that make up the nearly 49,000 total.) The 1-inch thick computer printout (provided by the Department) that listed the 8,996 uninspected businesses as of June 7, 2004, provided a striking illustration of the magnitude of this backlog.

**4. Among the 17,597 restaurants, bars, and similar businesses licensed by the Department of Agriculture, there were more than 4,000 not inspected for up to 2 years or more. Worse, that backlog is understated because it was computed based on the Department's faulty prioritization schedule discussed previously.**

The nearly 9,000 uninspected licensed and registered establishments noted in number 3, above, include 4,003 uninspected restaurants, bars, and retail businesses that served food and drink. Accordingly, based on the Department's records, and using the total population of 17,597 such businesses licensed by the Department, more than 1 in 5 of the scheduled inspections did not occur.

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**5. When inspections were performed, they were late, but the Department of Agriculture’s recordkeeping concealed the degree of lateness.**

The poor record of inspections reported in numbers 4 and 5, above, doesn’t tell the whole story because the 1-in-5 record is based on the backlog of inspections that the Department of Agriculture considered late. However, those numbers are clearly understated because, as previously discussed, the Department would not have considered restaurant inspections to be late even if they were scheduled at 18-month or 2-year intervals. Equally bad, because the Department of Agriculture’s recordkeeping resulted in some inspections being recorded incorrectly (for example, some temporary identification numbers were not later converted to permanent numbers), we could not determine when some inspections occurred at all.

When eateries are inspected late, serious violations might well remain both undetected and uncorrected. For example, one of the 40 licensed eateries that we sampled went for at least 6 years without an inspection after it was cited in 1998 for not sanitizing equipment and utensils, a critical violation. Another of the 40 eateries went for 20 months without an inspection after it had been cited in 2001 for only a minor violation; however, when the business was inspected again in 2003, it was then cited for five critical violations—improper toilet and/or hand washing facilities, presence of rodents or insects, not meeting temperature requirements for potentially hazardous foods, improper hand washing and/or cleanliness, and deficient sewage and waste water disposal.

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**Insufficient staffing and an inadequate computer system were said to play roles in the Department’s problems**

The preceding five conditions were significant, pervasive, and create serious public health risks. It was irresponsible for the Department of Agriculture not only to allow these risks to occur,

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but also to allow them to continue unabated in such a matter-of-fact fashion. Indeed, Department officials acknowledged the problems and suggested that the Department's efficiency was hampered by (1) an insufficient number of inspectors and (2) a fragmented, ineffective automated data collection system.

Regarding **an insufficient number of inspectors**, the Department of Agriculture's Bureau of Food Safety and Laboratory Services, the bureau that inspects food businesses, experienced an overall funding decrease of almost \$1 million from fiscal year 2002-03 to fiscal year 2005-06:

Funding for Department of Agriculture's Bureau of Food Safety and Laboratory Services	
Fiscal year 2002-03	\$9.23 million
Fiscal year 2003-04	\$9.31 million
Fiscal year 2004-05	\$8.85 million
Fiscal year 2005-06	\$8.34 million

During our audit period, the bureau employed between 56 and 57 inspectors (all full-time Department employees), depending on vacancies. In 1994, when a change in state law transferred the inspections of restaurants and other such eateries to the Department of Agriculture,<sup>12</sup> the Department employed as many as 65 inspectors.

The current numbers—as of November 2005—work out to an average of 764 establishments for which each inspector is responsible at any point in time, whether to visit, inspect, collect fees, or answer questions.<sup>13</sup> Actual figures vary according to the fluctuating number of businesses and inspectors in each region. For example, based on the November 2005 number just cited, the

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<sup>12</sup>See footnote 1.

<sup>13</sup> Not all establishments assigned to an inspector must be inspected yearly, as previously noted, so this number doesn't necessarily correspond to required annual inspections, a number impossible to project. Some businesses, whether they are licensed or registered, might have to be inspected more than once a year based on violations or complaints, for example. But registered businesses for which no complaints are received might require inspections less than once a year.

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average number of establishments for each inspector would range from a low of 649 to a high of 829.<sup>14</sup>

Few could argue that a ratio of one inspector for 600 to 800 businesses is reasonable. During our audit period, the Department compounded its problem by diverting inspectors from solely inspecting and, instead, assigning them also to collect license fees from establishments that hadn't paid them. According to Department officials, a goal of having inspectors collect fees on-site was to determine if late-paying licensees were still operating. This goal was faulty—and the procedure was flawed—for several reasons:

- First, having inspectors also collect money created an opportunity for unethical or desperate business owners to attempt to influence the results of a concurrent or future inspection. We have no evidence that such influence was either attempted or occurred. We could not even determine the extent of inspector-collected fees because the Department was unable to tell us how often inspectors collected these fees or how much they totaled. Inspectors simply made notations on individual inspection sheets (and apparently used them as receipts) but did not tally the fees collected in this manner.
- Second, inspectors sometimes engaged in the unacceptable practice of depositing multiple licensing, registration, or permit fees into their personal bank accounts and then writing a single personal check out to the Department. Officials at the Department of Agriculture told auditors that this practice was “normal,” apparently because inspectors found it more convenient and/or safe to put the money in one place instead of carrying around cash collected from numerous establishments (temporary food establishments at fairs or carnivals, for example, might have paid in cash).
- Third, by diluting the duties of inspectors with license fee collections, the Department did nothing to decrease the inspection backlogs and most likely made them worse. We

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<sup>14</sup> The Department of Agriculture could not provide accurate historical data to calculate the range that existed during our audit period.

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draw this conclusion based on the sheer numbers of late-paying licensees that existed at any point in time. For example, for the month of April 2004, there were 417 licensees alone that were delinquent in their payments. These 417 businesses were part of a larger group that included delinquent registered establishments —1,230 in all.

- Fourth, no matter who collected the license fees when they were late, the late payers were given no penalties for renewing their licenses late.

Going forward, a possible solution to determine whether late-paying licensees are still in operation would be for Department staff at headquarters to call an establishment that does not remit its renewal fees. One or more phone calls—which use fewer resources than an inspector’s visit—should reveal whether the business is still open. Likewise, having staff at headquarters make the calls would free up at least some of the inspectors’ workdays and help, in part, to address the backlog and lateness of inspections. Equally important, if the Department imposed penalties for not renewing licenses on time, the number of late payers would likely decrease.

By considering alternative procedures, including those just mentioned, Department officials could have demonstrated at least a good-faith attempt to work more effectively and efficiently with their existing complement.

Regarding the Department of Agriculture’s **computer system**, we found that the system’s shortcomings did indeed have a negative effect on staff productivity in numerous ways. Auditors either directly observed the following problems or learned of them by interviewing Department personnel:

- **Bad or outdated data.** The Department’s computer system listed hundreds of businesses with inaccurate Department-assigned identification numbers. Moreover, inspections that were initially stored temporarily in the system were often not transferred to an establishment’s permanent record.

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- **No assurance of facility's operating status.** The computer system could not list the correct current operating status—open or closed—of all establishments.
  - **No reports for use as management tools.** The system could not produce accurate summary reports of inspections, nor could it provide lists of newly opened or closed businesses, complaint inspections, substandard inspections, or businesses that had been issued sanctions.
  - **No shared access for other agencies.** The computer system could not be accessed by other agencies such as the state Department of Health (e.g., when investigating food-borne illnesses) or the state Department of Environmental Protection (e.g., when investigating environmental issues, such as water quality).
  - **No integration of data from another bureau within the Department of Agriculture.** The Department of Agriculture's food safety laboratory is critical to the inspection process because the laboratory tests the inspector-collected food samples for contamination. However, the Department's computer system did not integrate or link the laboratory data with the inspection data, meaning that the laboratory, for example, could not easily look up inspection results.
  - **Delays and disconnects.** When Department staff attempted to enter or retrieve data via phone line connections, the computer system often was slow and sometimes simply shut down the connection.
  - **10-day turnaround from inspection to posting.** The computer system collected data in one format from inspectors in the field and converted that data to another format for computer access at headquarters. It took 10 days for field inspection data to be available at headquarters.
  - **Problems in the field.** The computer system did not allow inspectors in the field to amend their inspection reports when the information was first entered. In addition, field staff

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noted that, when their laptop computers shut down with operational problems, it sometimes took months before the problems were corrected. For example, auditors learned that, in October 2004, 7 of the 57 laptops were inoperable and that 1 of the 7 had been down for about 4 months. In those cases, inspectors had to complete their reports manually, a process that slowed down efficiency even further.

- **Problems with system maintenance.** The computer system was from a company no longer in business. The hardware was antiquated, replacement parts were not readily available, and the Department was running short of personnel who could provide the necessary technical support.

In January 2004, the Department of Agriculture solicited an outside contractor to evaluate the system and develop a proposal for a system to meet the Department's needs. It is our understanding that the Department plans to implement a new \$600,000 system in January 2006. If that implementation occurs, it should resolve most of the automation deficiencies just discussed. However, it is not yet known whether the improved automation will be used to its full capability, or whether it will translate into better Department performance.

### **Recommendations**

1. The Department of Agriculture should ensure that eating and drinking places are inspected prior to initial licensure and again before each one-year license expires. *Target date: Begin immediately and implement in full by July 1, 2006.*
2. The Department of Agriculture should not renew licenses for eating and drinking places before first ensuring that the premises are inspected and that any past or current violations have been corrected. *Target date: Begin immediately and implement in full by July 1, 2006.*
3. The Department of Agriculture should ensure that all initial inspections and renewal inspections are accurately recorded

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on its database. *Target date: Begin immediately and implement in full by July 1, 2006.*

4. The Department of Agriculture should cease using an inspection prioritization schedule for eating and drinking places that allows inspection intervals to be more than one year. *Target date: Immediately begin scheduling at least annual inspections of restaurants, bars/clubs, and retail establishments that serve food and drink.*
5. The Department of Agriculture should prohibit inspectors from collecting license and registration fees from licensees and registrants. *Target date: Segregate the collection and inspection duties immediately.*
6. The Department of Agriculture should implement more efficient procedures to ensure timely inspections and to reduce inspection backlogs. If more staff or inspectors are needed despite the implementation of more efficient procedures, the Department should seek budgetary or legislative relief and should not simply acquiesce to noncompliance as it has done. *Target date: Begin immediately.*
7. The Department of Agriculture should continue with its planned implementation of the new computer system and utilize the new system to collect, maintain, and utilize accurate records and inspection data. *Target date: January 2006.*

**Summary of Department of Agriculture's Response**  
**and**  
**Comments by Department of the Auditor General**

*See Appendix C beginning on page 62 for the Department of Agriculture's full response to this audit report. Pages 2 through 7 of that response address Finding 1 in detail. We summarize some of the specifics below.*

*Summary of the  
Department of  
Agriculture's  
response begins  
at right.*

*In particular, the Department of Agriculture explains that its new computer system—expected to be in full-scale operation by January 2006—will “address many of the findings of the audit”:*

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1. *The new system will allow the “mining” of data to “provide for invaluable historical record keeping and reporting.” The Department says this feature will address the concern that that it could not segregate first-time licensees from other licensees.*
  2. *The new system will not allow the issuance of licenses if a business is not in compliance with the regulations. The Department links this feature to the concern that it renewed licenses without checking to see if previously cited violations were corrected.*
  3. *The new system “will allow management the ability to see where [inspection] backlogs are occurring and address these issues accordingly.” The Department says this feature will address the concern that nearly 9,000 of 48,828 food businesses were not inspected for up to two years or more.*
  4. *“All transactions for fee collection, balances, fines, etc. are handled” by the new system. The Department says this “financial handling” will address the concern that it did not keep numbers or dollar amounts of fees that inspectors collected.*
  5. *The new system will “incorporate data validity and data integrity checks” to help keep data “organized and current.” The Department says this feature will address the concern about bad or outdated data.*
  6. *The new system “will provide for a plethora of reports.” The Department says this feature will address the concern that there were no reports for use as management tools.*
  7. *Access to the new system “can be provided to anyone the Department deems appropriate.” The Department says this feature will address the concern that there was no shared access for other agencies.*
  8. *The new system “will integrate the [Department’s] food safety laboratory into the inspection process.” The Department says this feature will address the concern that the food safety laboratory did not have easy access to the inspection data.*
  9. *Field inspectors “will have direct access to the system in the field to make real time updates and modifications where applicable.” Field inspectors will also enter inspection data “live” via wireless cellular connections. The Department says these changes, plus others, will address the concerns*

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*such as computer delays and disconnects in the field and the 10-day turnaround from conducting an inspection to posting it so that headquarters could view it.*

*10. The new system “is hosted outside the Commonwealth’s network” and will be maintained through a contract that provides “24/7, 365 technical support.” The Department says these features will address the concern about problems with system maintenance.*

*In addition to discussing all the above technology-related issues, the Department says it “will work diligently to ensure inspections of food facilities occur before renewals of licenses are issued.”*

*The Department also notes that the federal Food and Drug Administration’s Model Retail Food Code, which the Commonwealth has adopted, recognizes assigning priority categories to businesses for the scheduling of inspections. The Department discusses this issue in depth—half of page 5 and nearly all of page 6 of its response—by providing a history of the involvement of eatery inspections, the involvement of the federal government, and the Commonwealth’s policies as they relate to the federal government.*

*Finally, the Department lists “actions recently taken,” including (1) issuing a policy memo to inspectors and supervisors telling them to stop accepting cash payments for licenses or registrations immediately, (2) authorizing overtime for inspectors to reduce inspection backlog, (3) authorizing filling of recently vacated inspectors’ positions, (4) directing regional supervisors to help with inspection backlog, (5) authorizing the possible reassignment of inspectors to “priority areas” to help with backlogs, and (6) authorizing the hiring of temporary full-time inspectors to help with inspection backlogs.*

*Comments by  
Department of  
the Auditor  
General begin  
here.*

*Our overall comment about the Department of Agriculture’s response must be direct and to the point: **The new technology is indeed critical, but we caution that the computer system is not the cure-all for the Department of Agriculture’s problems. In short, the problems are as much related to management and accountability as they are to technology.***

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*Our additional comments follow:*

- 1. The new system should address many issues that we identified, but it is neither fully tested nor fully implemented. Furthermore, results will depend on how management uses the technology, not on the technology itself. Until the results are subject to audit, it is impossible to predict what they will be.*
  
- 2. The Department of Agriculture's response, while noting that the new system will not allow license renewals without verifying compliance, does not specifically address how management will make the actual process work. The Department's standard practice was to renew licenses without first performing an inspection, yet the Department argues that the practice was part of a reasoned and well functioning inspection prioritization schedule adopted in accordance with the Food and Drug Administration's Model Retail Food Code. This argument is undermined by at least seven factors. First, our review of the Department's prioritization-based schedule found that one in five inspections did not occur. Second, the Model Retail Food Code was not adopted into regulation until December 2003, which was well into our audit period of January 1, 2002, through December 31, 2004. Third, much of the Department's narrative when referencing the federal food code addresses retail food stores even though our audit report clearly focuses primarily on restaurants and bars/clubs. The federal code is clear in its distinction between these types of businesses. Fourth, even the federal food code indicates that restaurants and other such eateries serving potentially hazardous food should be inspected **three to four times a year**, but the Department of Agriculture's priority coding allowed hundreds of restaurants and bars/clubs to be scheduled for **one inspection every 18 months or 2 years**. Fifth, inspectors were not required to document their rationale for the priority codes they assigned. Sixth, many of the businesses scheduled for 18-month or 2-year inspections were cited for numerous violations when they finally were inspected, but the Department did not subsequently increase the inspection frequency of these*

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*businesses. **Last, and most important of all, no matter how much the retail food industry has evolved since 1945 and no matter how well intentioned the Department’s prioritization schedule may have been, the fact remains that the Department of Agriculture did not follow Pennsylvania’s Public Eating and Drinking Places Law as required.***

3. *If the Department of Agriculture believes that the Public Eating and Drinking Places Law is outdated, as we believe it is and as the Department implied in its response, Department management should have looked to amend or replace the law with the same vigor that it pursued the much-needed new technology. Again, the Department’s problems are as much about management as they are about technology.*
4. *Finally, the Department of Agriculture’s list of “actions recently taken” (between late October and early November, 2005) shows how quickly Department management officials can respond when they place a priority on the issue at hand. Specifically, these actions were taken following our October 26, 2005, submission of this report to senior officials for their review. Indeed, the quick response illustrates the Department of Agriculture’s position that the audit findings are valid and that the Department seeks to use this report constructively.*

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## Finding 2

**When the Department of Agriculture did inspect restaurants and other food service businesses and found violations during our audit period, it did not follow up to make sure that violations were corrected, it rarely sought fines, and it suspended or revoked no licenses. Bad businesses therefore had little incentive to change, and their patrons were not afforded reasonable protection from health risks even though the Department of Agriculture knew that the risks were present.**

*Penalties for violations were rare and insignificant, and no licenses were suspended or revoked during our audit period. All in all, licensees could count on being subject to little or no consequence if they had critical violations in cleanliness or food handling.*

For the 6-month period of January 1 through June 30, 2004, the Department of Agriculture inspected 6,646 licensed restaurants, bars/clubs, and retail businesses that served food and drink. Because some of those 6,646 businesses were inspected more than once, the number of inspections was actually 8,425, which averages about 150 inspections for each inspector. Auditors who observed inspectors at work judged them to take their jobs seriously and to conduct thorough inspections. Interviews with inspectors, supervisors, and managers all revealed that the number of establishments assigned to each inspector, combined with other duties besides inspections, prevented more frequent visits to every business.

While the occurrence of any inspections, even if late, is better than none at all, our analysis of inspection frequency, follow-up, and enforcement offers little comfort to anyone who patronizes Pennsylvania's state-regulated eateries:

- The Department did not avail itself of strong enforcement options when critical violations were cited. Instead, the Department was weak and ineffective by giving too many opportunities to correct violations, not informing businesses of adverse consequences, and rarely administering adverse consequences.
- Of the 8,425 inspections, one of every four resulted in violations deemed significant enough (a) to require the business owner to take corrective action and (b) to require the Department of Agriculture to follow up to ensure that

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corrections were made. But follow-ups did not occur with any regularity.

- According to auditors' more detailed analysis of 26 of the inspected establishments that were cited for violations, the Department of Agriculture failed to conduct a follow-up inspection for two-thirds of those businesses.

Before we proceed with more specific discussion, it would be helpful to understand how the inspection process is supposed to work:

**What happens during a typical inspection?** Inspections of new facilities (not yet opened) are announced, while inspections of existing facilities are unannounced. As part of the inspection, inspectors typically observe employees at their work stations; check the cleanliness of the kitchen, the refrigeration and freezer units, the stock rooms, and the bathrooms; test the temperatures of both hot and cold foods to ensure they are maintained safely at proper temperatures to prevent food-borne illnesses; review the menu to see that it contains required disclaimers, such as the dangers of eating rare beef; and interview the owner/operator.

**How are inspections and violations documented?** Inspectors document their work using a comprehensive checklist-type report citing the violations with accompanying narrative about the specific details. Inspectors submit each report to their regional supervisor (as noted previously, the state is divided into seven regions) for electronic transmittal to Harrisburg headquarters, where a database of inspection results is maintained (but maintained poorly, as we point out in Finding 1).

**What are the most critical violations?** According to our review of the inspectors' 44-item checklist (see appendix B), there are 13 "critical items requiring immediate attention." We can summarize these critical items as follows:

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- 1) poor food conditions, spoilage
  - 2) not meeting temperature requirements for potentially hazardous foods during storage, preparation, display, service, and transportation
  - 3) not having proper facilities to maintain product temperature
  - 4) re-serving unwrapped and potentially hazardous food
  - 5) not restricting personnel with infections
  - 6) unwashed and unclean hands, poor hygienic practices
  - 7) improper sanitization of utensils and food equipment
  - 8) unsafe water conditions
  - 9) unsafe sewage and waste water disposal
  - 10) inadequate plumbing
  - 11) inadequate toilet and hand washing facilities
  - 12) presence of insects, rodents, animals
  - 13) toxic items improperly stored, labeled, used

**What actions can inspectors take for violations?** The inspectors' checklist offers four options, each of which is further defined in the manual for inspectors:

- 1) **N** = no further action is required. "N" is indicated if violations—*even critical ones*—are corrected before the inspector leaves the business. *No further follow-up is necessary.*
- 2) **V** = voluntary action will be taken. "V" is indicated in cases whereby business owners/operators are expected to cooperate voluntarily to correct violations. Even so, according to the inspectors' manual, the inspectors are supposed to re-inspect the business as soon as one day later or as late as 6 months later.
- 3) **W** = warning letter will be sent. "W" is indicated when inspectors find serious violations as well as a lack of concern by the owner/operator with regard to making corrections. A re-inspection should be performed between 14 and 30 days after the warning letter is sent.

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- 4) **P** = the Department will attempt to prosecute the owner/operator. “P” is indicated as the Department’s last resort to bring an establishment into compliance. A re-inspection should be performed within a 14- to 30-day time period but, as we’ll explain shortly, it is unclear when that time period starts.

In theory, the process described in the preceding paragraphs appears generally sound. In practice, however, it did not work, at least not during our audit period. Following are the conditions that support this conclusion:

**1. The Department of Agriculture failed to conduct a follow-up inspection for two-thirds of 26 businesses that we sampled.**

As we indicated at the start of this finding, our auditors conducted a detailed analysis of 26 establishments that were cited for violations during inspections that were made between January 1 and June 30, 2004. Examples of violations cited include presence of rodent feces, unlabeled meats, employees using bare hands to handle ready-to-eat foods, no hand washing facilities at a food preparation area, putrid standing water around a frozen dessert machine, and potentially hazardous foods maintained at unsafe temperatures.

- Thirteen of the 26 were designated with a “V” that, as noted previously, means a re-inspection should have occurred within 6 months. However, in 11 of the 13 cases, no re-inspection occurred within the 6-month period.

When we reviewed the preceding record with Department of Agriculture management officials, they asked us to explain that—even though inspectors did not return to the 11 eateries within 6 months—they did at least follow up within 12 or 13 months at the latest. But the Department’s own records only partially affirm this assertion. Specifically, 6 of the eateries were re-

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inspected within 6 ½ to 11 months; 3 of the eateries were re-visited within 14 to 19 months; and the remaining 2 businesses were not re-inspected as this report was being finalized on November 7, 2005. One of those businesses had been cited in January 2004 for 15 violations, including serious employee hygiene issues.

- Five of the 26 were designated with a “W,” meaning they should have been re-inspected between 14 and 30 days after a warning letter was sent. For 2 of the 5 businesses, inspectors did conduct a follow-up visit within this time frame. But another of the 5 businesses wasn’t re-visited for 2 ½ months—after having been cited for “recurring, intermittent” sewage violations.

The remaining 2 businesses—as of November 7, 2005—had *still* not been re-visited. One of the businesses had only minor sanitation violations, but the other business had been cited in mid-April 2004 for employee hygiene issues that, according to the inspector, were critical and required immediate corrective action.

- The remaining 8 of the 26 establishments were designated with a “P,” meaning that violations were so severe that the Department of Agriculture was pursuing prosecution. As of August 12, 2004, no re-inspections were performed in 3 of the 8 cases, which in some cases meant that as long as four months had passed without the re-inspection.

Overall, 17 of the 26 businesses—or two-thirds—did not receive the follow-up inspections that the Department of Agriculture said it would perform. Department officials said that, despite the violations, follow-up was not always completed because of the inspectors’ heavy workloads. Instead, officials noted, inspectors had to prioritize their time by often concentrating on businesses that went the longest without an inspection.

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**2. “Warning” letters were weak and, consequently, misrepresented their purpose to warn.**

Department officials told us that warning letters are used after an inspection reveals a critical health-endangering violation, and also when an establishment fails to correct critical violations cited during previous inspections. Based on those criteria, it would be logical for warning letters to communicate both a sense of urgency and a message of seriousness—in other words, to communicate a “warning” to the business owner that consequences would occur if violations were not corrected. However, our review of a standard warning letter revealed neither urgency nor seriousness. There was no mandate to correct critical conditions; instead, the letter suggested merely that there were “significant adverse conditions, which should be corrected.” Equally troubling is that the letter included no consequences for failing to correct the “adverse conditions” in a timely manner—no mention of license suspension or revocation, no mention of fines for violations, no “warning” of anything.

Auditors also learned that warning letters were not sent consistently; that is, the decision to send such letters was not applied consistently but varied from one case to another based on the judgment of each inspector.

**3. The prosecution of non-compliant licensees was also weak. Department officials admitted that, in many cases, business owners found it less expensive to pay minimal fines than to correct critical violations.**

In cases where an inspector—after seeking approval from three levels of management—decides to pursue prosecution through the imposition of fines, the case goes before a magisterial district judge. The inspector who follows this option finds his or her inspection time to be even more diluted by this process because the inspector is the sole representative of the Department of Agriculture at such

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hearings; at no point does the Department's legal counsel typically become involved.

If the hearing results in a fine, the amount is set by the magisterial district judge, who is constrained by provisions of law enacted in 1945. Such fines might range from \$10 to \$50, plus costs, or possibly higher. But even \$100 appears to be of little significance relative to present day standards. It is entirely believable that some business owners found it easier to pay a fine than to correct violations.

Another problem with the prosecution process is the lack of clarity regarding when a business under prosecution should be re-inspected. The Department's procedures say that inspections should occur between 14 and 30 days, but between 14 and 30 days of what is unclear.

**4. The weakness of prosecution attempts is further illustrated by the poor compliance records of businesses that were indicated for prosecution.**

Our review of inspections showed that, in total, between January 1 and July 2, 2004, there were 16 restaurants, bars/clubs, and retailers that served food and drink who were cited for violations so serious that the Department of Agriculture gave them a "P" code to indicate that prosecution would be pursued. We reviewed the histories of these 16 establishments and found that, over the prior 3-year period, the 16 establishments had been inspected a total of 123 times and had collectively amassed 892 violations.

These numbers show that, on one hand, Department officials were correct when they said their inspectors concentrated on inspecting more serious violators at the same time the overall backlogs were growing. On the other hand, however, is the even more important question of whether the Department's inspection "concentration" strategy worked. Specifically, did the strategy bring positive results—in the form of compliance—by focusing on the most serious violators?

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Our analysis shows that the Department of Agriculture did not employ its inspection strategy effectively because the stronger inspection presence was not coupled with aggressive enforcement. In short, it did little good to inspect the frequent violators without imposing penalties on them as well.

- Of the 16 establishments, the Department pursued fines for just 6 of them—2 were fined only \$50 (twice in one of the cases), 1 was fined \$72 (twice), 2 were fined \$100, and the other was fined \$150.
- Of the remaining 10 establishments, there were virtually no penalties for 9 of them: The Department ultimately did not pursue prosecution at all for 4 of the businesses and lessened the severity of the “action code” for 5 others from “P” (for prosecution) to either “W” (owner gets a warning letter), “V” (owner takes voluntary action), or “N” (owner doesn’t have to take any further action). Regarding the tenth business, prosecution was still pending at the end of our field work.

Even more concern arises based on some additional details:

- The establishment, above, that was fined \$50 twice had seven inspections over a two-year period and was sent three warning letters before the two \$50 fines were assessed upon prosecution. The owner had been cited for the same violation—more than 150 rodent droppings/feces and gnawed debris on the stock room floor and shelves—in three of the seven inspections.
- One of the establishments for which the Department ultimately did not pursue prosecution also had seven inspections over a 4-month period. In fact, three of those inspections occurred over just 7 weeks. The violations were critical—for example, raw foods were stored on top of ready-to-eat foods—but the owner took no corrective action. The Department gave auditors no reason for not pursuing the prosecution as intended originally.

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- The Department found dead cockroaches on raw chicken at another restaurant where prosecution was not ultimately pursued. Also found were medications stored with food items and potentially hazardous foods stored at unsafe temperatures. All in all, the Department inspected this business 13 times over a 29-month period but, at one point, allowed 7 months to pass before going back for another visit—and even then the visit was not made as a follow-up but instead was triggered by a consumer complaint.

**5. The Department failed even to attempt prosecution in some cases.**

- In one case, the Department inspected a restaurant five times between May 1, 2001, and October 5, 2004, but inconsistently. For example, at one point the Department allowed 3 years to pass without an inspection—and that gap occurred after 20 violations (9 of them critical) had been cited. Over the total period, inspectors found 54 violations, of which 22 were critical—including an infestation of cockroaches.
- Another business was inspected ten times between January 3, 2001, and September 16, 2004, with 53 violations, including 12 critical and 12 repeats and operating without a valid license. Still, the Department failed to make the required follow-up inspections within the required time frames, at one point taking 5 weeks to re-inspect instead of 14 to 30 days.
- Still another business had six inspections in a 22-month period, during which 34 violations in total were found, including 10 critical. Even so, rather than re-inspecting within required time frames to determine if violations were corrected, the Department did not follow up for time periods ranging from several weeks to 7 months. On two occasions, the owner was operating without a current license. The Department never issued even a warning

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letter, opting instead for “voluntary” compliance with re-inspections.

**6. During our audit period, the Department of Agriculture did not suspend, revoke, or refuse to renew the license of any restaurant, bar/club, or retailer that served food.**

Even though the Department was authorized to suspend, revoke, or refuse to renew licenses, it did not do so. Department personnel told our auditors that these options were not pursued because the Department’s top management would neither support nor authorize such actions against non-compliant businesses.

There are several issues at play here, and they all point to poor management. If inspectors didn’t bother to pursue serious enforcement options because they believed management would provide neither support nor authorization, then management wasn’t doing its job to communicate otherwise. If management contends it didn’t know its inspectors felt constrained, then it should have known by asking, as we did for the audit period, why not a single license among nearly 18,000 had been revoked—or, for that matter, why so few non-compliant businesses had been sanctioned in any significant way.

Whatever the case, the numbers—or lack of numbers—speak for themselves: No significant enforcement actions were taken. The state has a duty to protect the public health, and taxpayers expect the state to fulfill that duty by taking swift and decisive action against eateries that are unsafe and unclean. This duty is all the more critical during these uncertain times when the protection of our nation’s food supply is of increasing concern.

When we discussed the preceding concerns with Department management officials, they asked us to point out that Department inspectors have exercised the option of “voluntary closures,” whereby the inspectors—during the course of an inspection when imminent health hazards are

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observed—to cease operations immediately and voluntarily until the violations are corrected. However, we were unable to evaluate the effectiveness of any such “voluntary closures” because the Department (1) had no standardized written or verbal policies or procedures for such actions, (2) could not provide us with any statistics about these “voluntary closures,” and (3) could not prove that establishments which purportedly closed voluntarily actually stayed closed until corrections were made.

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**Financial constraints may have contributed to problems, but the Department of Agriculture’s focus on *educating* the industry—while progressive and necessary—did not strike an adequate balance with *regulating* the industry**

The nearly \$1 million decrease in funding from fiscal year 2002-03 to fiscal year 2005-06 (see page 16) may have contributed to the preceding six conditions, but—whether or not funding played a significant role—management was not effective in addressing those conditions. The problems can be fixed, but only if the Department of Agriculture’s top officials (1) make financial and legislative needs known to the governor and the General Assembly and (2) make themselves known as stronger regulators to their own staffs and the restaurant industry. Stated another way, the Department of Agriculture must take action to make changes—including seeking legislative changes if necessary—whether increasing penalties, charging fees for re-inspections, implementing procedural changes to work more efficiently, better projecting its regulatory role to the industry, or much more effectively communicating the seriousness of its problems and needs to those who can provide the resources to help.

The Department of Agriculture has stated publicly that it has chosen to focus its efforts more on educating the industry and less on inspecting it. On October 3, 2005, the Secretary of Agriculture testified before the House Agriculture and Rural Affairs Committee and presented corresponding written testimony that explained this approach:

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The foundation in protecting the public food supply is making sure those individuals involved in food preparation and delivery on Pennsylvania food safety laws and regulations are properly trained. When a [Department of Agriculture] Food Sanitarian inspects a food establishment and finds violations, the sanitarian takes the time to review the violations and explains actions the food establishment employee or manager can take to resolve the situation and prevent future violations. All personnel within the Food Safety Division are called upon to train food facility staff, and most of the time this is accomplished through classroom instruction and is tailored to the facility's need. As of August 27, 2005[,] the Department has issued nearly 32,000 Food Employee Certification Certificates to management employees of food establishments and 5,532 non-profit Certifications to non-profit organizations that serve food to the public.

The Secretary's testimony also included this:

The Department will continue to concentrate on education and training as the primary source of food safety because an inspection is just a snap shot of the conditions during the time of the inspection, while good food safety knowledge and practices can be encouraged at all times.

The Secretary indirectly addressed the issue of inspectors and their workload which, as we noted earlier, averages more than 764 establishments per inspector:

The Department is working to improve and become more efficient with current complement levels by utilizing technology. This technology will allow us to better manage our food safety responsibilities and better serve the consumer. [Emphasis added.]

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The Department of Agriculture's commitment to work more efficiently with current complement levels speaks to issues we have already raised in this report, and that commitment is significant. The commitment to continue its critical and necessary work to educate, train, and certify food handlers is also significant. Indeed, when we observed inspections, we verified inspectors' efforts to educate and train business operators and their employees in cleanliness and food safety. We also have viewed educational handouts provided by the Department to discuss the law, the regulations, and other food safety issues. Finally, we have noted that the Department lists numerous educational opportunities for eatery owners and operators, particularly to meet food employee certification requirements that the state adopted in 2004.

Unfortunately, without aggressive enforcement and with no efforts to amend the law, the previously stated commitments do not provide the balance needed to fix the problems this audit has identified.

In summary, the Department of Agriculture clearly needed to be more proactive in its enforcement approach to bring about greater compliance during our audit period. The resolution of the computer system is critical, just like the education and training. But owners and operators of businesses—whether the businesses are good or bad, and whether the food handlers are trained well or poorly—must know that Pennsylvania is serious about enforcement and will follow through with penalties that the Department of Agriculture is expressly authorized to impose. Conscientious businesses will welcome the fact that the standards they already follow will be equitably enforced. Negligent businesses will take the Department far more seriously than they appear to have done during this audit.

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### **Recommendations**

8. The Department of Agriculture should evaluate constraints on fine amounts and should actively seek legislative relief to bring amounts into present-day relevance. *Target date: Evaluate immediately and seek legislative relief for fiscal year 2006-2007.*
9. The Department of Agriculture should implement more efficient follow-up procedures to ensure that eateries correct cited violations. *Target date: Begin immediately.*
10. The Department of Agriculture should seek a legislative change to charge fees for follow-up inspections. *Target date: Discuss this issue with legislators and pursue legislative changes for the 2006-07 budget year.*
11. The Department of Agriculture should strengthen its warning letters to include language about requirements for the timely correction of violations and consequences for uncorrected violations, including license suspensions and revocations and the imposition of fines. *Target date: Implement immediately.*
12. The Department of Agriculture should be much more aggressive in using its authority to seek fines on a more regular and consistent basis, and to suspend, revoke, or refuse to renew licenses when eateries are cited for critical, significant, or repeated violations. *Target date: Begin immediately.*

### **Summary of Department of Agriculture's response and Comments by Department of the Auditor General**

*See Appendix C beginning on page 62 for the Department of Agriculture's full response to this audit report. Pages 7 through 11 of that response address Finding 2 in detail. Here, however, we can summarize the Department's response as follows:*

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*Summary of the Department of Agriculture's response begins at right.*

*The Department of Agriculture says that it “disagrees with the Auditor General’s assessment of the best business practices for regulatory enforcement and the most effective means of public health protection regarding public eating or drinking places within the Commonwealth.” The Department emphasizes that it “does have a policy in place for determining follow-up to inspections conducted at facilities, to include re-inspection, warning letters, and/or prosecution,” that it will “continue to pursue prosecutions of food facilities where warranted,” and that its policy is to “take action that will immediately protect the public health, by employing disposals of any adulterated or noncompliant foods found in a facility and closure of facilities that have violations of an imminent health hazard.”*

*The Department goes on to discuss its requirements under the Public Eating and Drinking Places Law related to prosecution actions, or those that result in fines. The response discusses three facilities for which the Department initiated prosecutions, explains that the three cases “illustrate the problems associated with prosecution under the offices of the District Justice,” and lists dates and events to support its position. The Department notes that it will propose legislative changes “to make fines more relevant and consistent” and says that the “mechanism for enforcement [should] be evaluated,” perhaps by changing the law. The response adds, “Barring this change, however, the Department feels that heavily utilizing disposals of food and [voluntary] closure of food facilities is a much greater financial deterrent to noncompliant food businesses, as well as being extremely more effective and timely in protecting the public health than institution of prosecutions within the District Justice system.”*

*The Department also writes that it “instituted [voluntary] closure of 47 food facilities within the Commonwealth” during the 6-month period of January 1, 2004, through June 30, 2004, which was the period we cited in our report. It discussed one such voluntary closure that was observed by a member of our audit team. The Department then discusses the process by which licenses can be revoked under the law and says that “[t]he Department feels this is an onerous, time consuming, financially burdensome process and does not serve to protect the health of*

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*the Commonwealth consumer.” It is a “more financially expedient” and efficient use of an inspector’s time—and it results in “immediate protection of the public health—for the Department to utilize “mandatory food disposals and [voluntary] food facility closures,” says the Department. The response also discusses the “N” (no action), “V” (voluntary action), and “W” (warning letter) options in detail, and provides details and dates about businesses we discussed in our findings.*

*Finally, the Department says that it has recognized many of the errors and problems that resulted in oversights in follow-up and notes that the errors and problems were caused by the Department’s existing computer system. The Department says that the new system will address many of these issues.*

*Comments by  
Department of  
the Auditor  
General begin  
at right.*

*Our comments to the Department of Agriculture once again focus on the importance of resolving issues through better management of the Department as opposed to relying on new technology to fix the errors and problems. Specifically:*

- 1. With regard to the Department of Agriculture’s response that it does have policies and procedures in place for following up to inspections via re-inspections, warning letters, and/or prosecution, the only “policy” that the Department provided our auditors—after repeated requests for all policies and procedures—was the Department’s manual for inspectors, a manual that was not updated since at least 1992. This manual did address timing for follow-up inspections, and we used this timing as criteria for our testing. Yet the Department did not follow its own timing requirements that were outlined in this manual.*
- 2. With regard to the Department of Agriculture’s discussion about an “onerous, time consuming, financially burdensome process” related to having to hold a hearing before the Department can suspend or revoke a license, we find this argument to be entirely untenable in that the administrative hearing process may be the only method for successfully bringing repeat violators into compliance and deterring future violations. We base our judgment on the fact that, as acknowledged by the Department, the fines provided by the*

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*Public Eating and Drinking Places Law have not been increased since 1945 and should be revised. Furthermore, the Department has acknowledged the problems associated with successfully securing fines through prosecutions by magisterial district judges. Finally, it must be noted that other state agencies in this Commonwealth have been able to bring their licensees or registrants into compliance with governing statutes through the administrative hearing process. These other agencies, too, might consider the process to be onerous and burdensome, but they nonetheless exercise their enforcement powers in order to uphold the public interest without compromising the due process rights of the respondents.*

- 3. The Department of Agriculture's discussion about the effectiveness of voluntary closures is difficult to support for a variety of reasons. First, the Department had no written policies and procedures on voluntary closures. Second, the Department could provide us with no statistics until its written response noted there were 47 such closures in the first 6 months of 2004. Even now, it is not clear how many or how few of the 47 were restaurants and bars/clubs. Third, there was no consistency or uniformity in the application of these closures. Our audit testing, for example, revealed several establishments with numerous critical violations but no voluntary closure and no mandatory food disposal. Fourth, as the Department noted, we did observe a voluntary closure. But that observation did not cause us to support the voluntary closure option and, instead, caused us to question it as we discuss more fully below.*
- 4. The voluntary closure that we observed may have been well intentioned, but it offers a frightening glimpse into why the process is not a good one. Specifically, the facility was open for business and serving meals when the inspector—with our auditor in tow—found the kitchen to be infested with roaches and insects. The owner concurred with the inspector to “close” voluntarily, but that meant only that new patrons were turned away via a sign denoting a nonexistent “water main break.” Meanwhile, the existing diners were allowed to finish their food, completely unaware that the kitchen from*

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*where that food had just come was deemed too unsuitable to use to prepare food for someone else. Even worse is the Department's contention that "the closure resulted in the immediate and efficient protection of the public health" when what the Department does not say is this: **This same facility's most recent inspection prior to this "closure" had occurred 3 years earlier, at which time it had numerous critical violations as well—including an infestation of roaches.***

- 5. On page 8 of the Department of Agriculture's response, the Department discusses three facilities, the second of which was allowed to operate from March 15, 2004, to November 22, 2004, without any oversight whatsoever from the Department while the Department pursued a prosecution option with the magisterial district judge to secure a fine. The district judge fined the facility and ordered a follow-up inspection in January 2005, during which the same violations were found. Only then did the Department attempt its "voluntary closure" option, which the facility violated anyway by opening the next day. Finally, the police closed down the business. This example illustrates not only the ineffectiveness of voluntary closures, but also the ineffectiveness of the Department during the time a fine is being pursued through a district judge. While the Department of Agriculture laments that seeking a prosecution through the district judges' system takes too much time, the Department should itself take some responsibility to monitor the businesses during that time period, however long or short. Instead, the Department has taken the position that it is not permitted legally to inspect food businesses when it is pursuing a fine. When auditors asked for the Department's legal opinion to support this position, the Department could not provide such an opinion.*

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## Finding 3

**The Department of Agriculture did not readily provide the public with useful information about restaurants and other food service businesses with violations. Citizens thus could not easily counteract the Department's poor inspection follow-ups and weak enforcement attempts by getting enough information to make their own decisions about patronizing unclean or unsafe eating places.**

*The Department of Agriculture did not make it easy for the public to get information about inspections of eating places, especially those that had violations.*

It was bad enough that the Department of Agriculture did not make use of strong enforcement options in order to protect the public from unsafe and unclean restaurants and other such establishments. But it was worse that the Department did not compensate for its lack of enforcement by providing patrons of restaurants and other food businesses with enough data to make their own decisions about whether or not to eat there.

According to Department officials, inspection reports are available to the public. But auditors found that the state did not go out of its way to provide the public with these reports:

- **Inspection results were not available on the Department's Web site.**

Other states make inspection reports available either online or through other means. Increased public awareness of restaurant inspection reports would provide an incentive for owners to comply with standards and to correct violations. Virginia and Tennessee, for example, publish inspection results.

In Pennsylvania, *The Morning Call* newspaper in Allentown published a two-part investigative series on July 31 and August 1, 2005, about the state's problems with food inspections. The newspaper subsequently created what appears to be the state's only online database that reports inspection results statewide. Auditors have tried this system and found it was easy to navigate and contained meaningful information. Accordingly, the question that follows is this: If newspaper reporters could establish a meaningful and publicly accessible database when their full-time jobs are *not*

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to oversee food safety in the Commonwealth, why couldn't the Department of Agriculture—whose job is to oversee food safety—do the same?

- **Inspection reports were not routinely provided to the media and, instead, were made available only when requested.**

Even when the media or members of the public requested inspection reports, the Department of Agriculture withheld reports of inspections that were tagged “W” (warning letter indicated) and “P” (prosecution indicated).

According to *The Morning Call*, it took “nine months and a series of legal skirmishes to shake loose enough information to analyze food safety at Pennsylvania eateries and retailers.”<sup>15</sup> The paper’s analysis “revealed roadblocks to public access of food inspection records from the Agriculture Department and agencies throughout the region.”<sup>16</sup> The Department’s policy to withhold “W” or “P” inspections from the public and the media illustrates even more roadblocks.

- **When the Department did go forward with an attempt at prosecution by participating in a hearing, the Department still withheld the inspection reports that led to the hearing.**

This withholding of information occurred despite the fact that hearings before magisterial district judges are open to the public.

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<sup>15</sup> Tim Darragh and Christopher Schnaars, “PART ONE: A fractured food safety system, too few restaurant inspectors and a hodgepodge of record-keeping,” *The Morning Call*, July 31, 2005.

<sup>16</sup> Christina Gostomski, “Lawmakers question plan to simplify state’s troubled food-inspection system,” *The Morning Call*, October 4, 2005.

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- **When they were provided, inspection reports showed a “score” that was misleading.**

Specifically, inspectors used a scoring system whereby the top score was 100 points, a system that would lead reasonably to the belief that a high score—96, for example—is good. But a facility could be infested with dog feces in the kitchen, cat urine in the storeroom, and rat droppings and cockroaches in the bathrooms, yet still receive a score of 96 because, no matter how pervasive, a critical violation in the area of “insect, rodent, and animal control” results in just one 4-point deduction. Another facility with large quantities of spoiled food could receive a score of 95 because no matter how many violations in the category of “No spoilage,” only 5 points would be deducted.

Of the inspection reports reviewed by auditors, there were 21 reports—representing 16 establishments—for which inspectors indicated that action should be taken to prosecute the owner. However, the highest score among the 21 inspection reports was 96, the lowest score was 63, and the average score was 80.2. Because much of the public has been conditioned to view 90 – 100 points as an “A,” 80 – 89 points as a “B,” and so on, the Department of Agriculture’s scoring system could easily be misperceived.

- **There was no single toll-free statewide telephone number for people to call with complaints about all the state’s restaurants and other eateries.**

We could find no single number that the state publicized for people to call if they had complaints about food-handling businesses or questions about inspections. As this audit shows, there is no easy way to know which specific entity—state or local—inspects each Pennsylvania food business. Moreover, it’s likely that most persons would think to call the Department of Health. Fortunately for consumers, when we called the Department of Health as a consumer might do, the representative there knew immediately that our call should be directed to the Department of Agriculture. Nevertheless, it

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would be even more helpful if the state were to publicize widely a single number—preferably toll-free—for consumers to call with complaints or questions about any eatery in the state.

Educating consumers about the standards that restaurants and other eateries are required to follow, along with posting the results of inspections where they are easily accessed and providing a statewide telephone number for complaints or questions, would be beneficial to the public and the businesses alike. The public would benefit from being able to make informed decisions about where to eat, and eateries would be more inclined to address violations if the owners knew that violations would be made public.

### **Recommendations**

13. The Department of Agriculture should publish inspection reports on its Web site and implement a proactive public information program using, for example, routine press releases to notify the public about establishments that have been cited for critical, significant, or repeated violations, as well as establishments that have excellent records. *Target date: Implement in calendar year 2006.*
14. The Department of Agriculture should revise its inspection report rating “score” so that multiple violations in the same category result in more deductions and so that high scores are not achievable for establishments with critical or multiple violations. *Target date: Implement in calendar year 2006.*
15. The Department of Agriculture should establish and publicize a toll-free number for callers to register complaints or ask questions about all food-handling businesses statewide. *Target date: Implement in calendar year 2006.*

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**Summary of Department of Agriculture's response  
and  
Comments by Department of the Auditor General**

*See Appendix C beginning on page 62 for the Department of Agriculture's full response to this audit report. Pages 11 and 12 of that response address Finding 3. Here, however, we can summarize the Department's response as follows:*

*Summary of the Department of Agriculture's response begins at right.*

*The Department says it does believe that consumers have a right to know the condition of food establishments and that it has taken steps to address this concern via the new computer system. The Department says it is equally important that businesses have a right to have an accurate inspection posted. "We must be very careful not to mislead the public while trying to inform them," writes the Department, and also notes that the current inspection reports allow for "scores" that "in some cases are misleading and not reflective of the actual conditions."*

*The Department also writes, "[T]here is a toll-free number published for the Pennsylvania Department of Health, which allows callers the option to choose 'Restaurant.'" When using that number, 1-877-PA HEALTH, and following the prompts, callers will be connected to the Department of Agriculture where complaints will be addressed.*

*Comments by Department of the Auditor General begin here.*

*Our comments are as follows:*

*The response to our recommendation related to public information is completely inadequate. People should not have to wade through other agencies to find the one responsible for the inspection and licensure of eateries. We are calling for the Department of Agriculture to be accountable to its public, and the way to do this is for the public to have direct, immediate, and easy access to the Department of Agriculture—not the Department of Health. We agree it is important for only accurate information to be provided to consumers, whether on the Web site or via other means, but that issue should have been addressed long ago. The Department of Agriculture should now make itself and its mission better known to the public.*

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## Finding 4

**The Department of Agriculture had no procedures in place to monitor or coordinate the activities of all the local government entities that oversee eating places in the Commonwealth. Restaurant patrons therefore could not look to a single source to ensure that all eating establishments in Pennsylvania were safe and clean.**

*Consumers can not look to a single source to ensure that all Pennsylvania eateries are safe and clean.*

As explained previously, the Department of Agriculture oversees only the public eateries that are not inspected by local governments. There are 206 local government entities that carried out their own oversight, and these entities are listed on pages 4-7 of this report. Footnotes 2 and 3 on page 1 of this report briefly explain how these 206 entities are made up of 10 cities and counties with full-service health bureaus and 196 local municipalities such as boroughs and townships that elected to oversee eateries by themselves.

The Department of Agriculture has not established rules that would require the 206 local government entities to report their licensing and inspection activities as those activities relate to the requirements of the Public Eating and Drinking Places Law and its regulations in the Food Code.<sup>17</sup> When auditors interviewed officials from nine local government entities, we learned that inspection and licensing procedures varied from one place to another. Even the state Department of Health, which is responsible for tracking food-borne illnesses, did not require or foster information sharing and coordination between the Department of Agriculture and all the 206 local government entities.

Without coordination by a single state agency, it is impossible to organize efficient responses to outbreaks of food-borne illnesses statewide, to ensure that all state eateries are being licensed and inspected uniformly, and—most fundamental of all—to get answers to the following questions:

- **Unknown:** How many licensed eating and drinking places *in total* operate in the state of Pennsylvania? As noted on page 1 of this report, the total number of licensed restaurants,

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<sup>17</sup> See footnote 1, page 1.

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bars/clubs, and retailers that serve food and drink in Pennsylvania is not known.

- **Unknown:** How many eating and drinking places have had their licenses suspended or revoked by local government entities, and for what reasons?
- **Unknown:** Do all local government entities enforce the licensing and inspection requirements of the Public Eating and Drinking Places Law and the cleanliness and food handling requirements of the Food Code? If not, which entities do enforce the requirements and which entities do not?
- **Unknown:** How do the local government entities respond to complaints?
- **Unknown:** How many occurrences of food-borne illnesses are reported by each local entity, how often are they reported, and to whom?

Of the 206 entities, basic information about only 8 was known by the Department of Agriculture, which established memorandums of understanding with the 8. Those entities are 8 of the 10 cities and counties that established their own health departments and include the following: Allegheny, Bucks, Erie, and Montgomery counties; and Allentown, Bethlehem, Philadelphia, and York cities. Agreements from the other two entities—Chester County and Wilkes-Barre City—were not in the Department’s files and could not be presumed to exist.

The Department would have been able to collect significant and relevant information from the 8 because it entered into agreements known as memorandums of understanding and also held periodic meetings with those entities. Based on the memorandums of understanding, Department officials could have—but told auditors they did not—request relevant information such as copies of ordinances or resolutions that established the health bureaus, records supporting the adoption of cleanliness and food-handling standards such as those in the Food Code, records showing the number of eateries in operation

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in each jurisdiction, records of the required frequency and scope of inspections, evidence that licensing and inspection requirements are being met by the health bureaus, qualifications and experience of the inspectors, and the fee schedules for licensing and inspections.

For the remaining 198 local entities, the Department of Agriculture knew virtually nothing. Furthermore, if the Department were to learn about local entities that do not carry out food safety oversight, it doesn't have procedures in place to address that lack of oversight.

When asked why no statewide coordination and oversight existed, Department of Agriculture officials were quick to point out that they are not *required* to coordinate the inspection procedures or results of the local entities. While that assertion may be true, it is also true that the Department of Agriculture is *not prohibited* from doing so. In fact, coordinating inspection procedures of the more than 200 entities and becoming the repository for licensee data and inspection results would be consistent with the powers of the Department to “make such reasonable rules and regulations as may be deemed necessary for carrying out the provisions and intent of [the Public Eating and Drinking Places Law.]”<sup>18</sup>

If the Department of Agriculture chose to be more proactive, it certainly could do so. In fact, Department officials acknowledged that knowing information about all 200+ local jurisdictions would greatly increase the Department's ability to monitor licensing and inspection activities statewide, thereby improving the oversight of food safety in Pennsylvania.

### **Recommendations**

16. The Department of Agriculture should establish a database in order to know precisely what eateries are licensed statewide, which eateries have had their licenses suspended

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<sup>18</sup> 35 P.S. § 655.6(a).

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or revoked by local authorities, how all local governments enforce the licensing and inspection requirements of the Public Eating and Drinking Places Law, how all local governments respond to complaints, and how and to whom local governments report food-borne illnesses. *Target date: Establish database by end of calendar year 2006.*

17. The Department of Agriculture should seek to coordinate and standardize licensing and inspection procedures for eating and drinking places statewide and should also collect and publish (on its Web site and through routine news releases) statewide licensee data and inspection results from the more than 200 local government entities. *Target date: Begin acting on this recommendation immediately; complete full implementation by end of fiscal year 2006-07.*
18. The Department of Agriculture should actively seek the voluntary cooperation of local health departments to enter into written agreements with the Department that set forth licensing and inspection standards, data reporting requirements, and food-borne illness reporting requirements. *Target date: Establish agreements by the end of fiscal year 2006-07.*
19. If Department of Agriculture officials believe that a more specific mandate is needed to enhance the Department's authority to implement the preceding recommendations, the officials should either promulgate applicable rules and regulations under the authority of the Public Eating and Drinking Place Law or request that the General Assembly enact more specific legislation. *Target date: Begin meeting with legislators before February 2006 to discuss the food safety oversight problems, causes, and recommendations reported in this audit, including the need for more coordinated oversight and more specific legislation if the problems cannot be resolved under the current authority.*

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**Summary of Department of Agriculture's response  
and  
Comments by Department of the Auditor General**

*See Appendix C beginning on page 62 for the Department of Agriculture's full response to this audit report. Page 12 of that response addresses Finding 4. Here, however, we can summarize the Department's response as follows:*

*Summary of the  
Department of  
Agriculture's  
response  
begins at right.*

*The Department of Agriculture responds that, through memorandums of understanding with six local and county health departments, it is "accomplishing cooperation as well as oversight from each of the regulatory food inspection agencies" and that it will "continue to seek these types of partnership agreements with other health departments." The Department also writes that it uses "voluntary means in the absence of regulatory mandates" to coordinate activities with local health departments. Finally, the Department notes that it has encouraged all Act 315 health departments to participate in the new information management system, and that the Department is seeking a grant to allow local health departments to participate in the new system as well.*

*Comments by  
Department of  
Auditor  
General begin  
here.*

*Our comments are as follows:*

*The Department's response is inadequate and addresses only the current or future actions it is going to take to address the lack of procedures for monitoring and coordinating the activities of the 10 counties and cities that established local health departments under the Local Health Administration Law (Act 315 of 1951, as amended). The Department's response neglects to address efforts to better coordinate and monitor the enforcement of the Eating and Drinking Places Law (Act 369 of 1945, as amended) by the other 196 cities, towns, townships, and boroughs.*

*We agree that Act 369 does not provide the Department of Agriculture with clear-cut authority over these local government entities.<sup>19</sup> However, as the primary agency at the state level*

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<sup>19</sup> In fact, the Department of the Auditor General has included a recommendation in its letter to the Governor urging that he take the necessary steps to enact legislation that provides the Department with such authority.

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*charged with oversight duties under Act 369, the Department of Agriculture is neither prohibited nor precluded from reviewing local government entity compliance with the minimum standards of the Act and/or state regulations. Moreover, by seeking voluntary compliance by all local government entities, where necessary, the Department would have helped to bring some level of statewide uniformity to eating place oversight.*

*The Department of Agriculture's failure to take such steps is all the more significant in light of the Department's knowledge that there are significant duplications of effort and varying degrees of enforcement among local government entities. In the absence of a new law, the Department should make every effort to better coordinate the activities of the local government entities and should seek grants and other funding for **all** local agencies, not just those to which Act 315 applies.*

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## Finding 5

**The Department of Agriculture failed to ensure that restaurants operating in the state's own backyard were licensed and inspected—specifically, restaurants in the State Capitol itself and in other state-owned or state-leased office buildings. These restaurants serve thousands of people daily who visit, work in, or represent state government, including Pennsylvania's lawmakers, yet the state did not abide by its own laws to ensure these eating places were safe and clean.**

*Restaurants in the State Capitol and other state buildings were not inspected or licensed because of bureaucratic disputes.*

Anyone visiting the State Capitol in downtown Harrisburg cannot help but notice the school children who tour the building and invariably eat lunch at the cafeteria tables that flank the ground floor restaurant. Tour groups often arrive by bus and frequent the restaurant or dine at tables in the adjoining atrium.

An estimated 93,000 persons a year avail themselves of tours by Capitol tour guides, and that number doesn't include the thousands of other guests who visit the Capitol to attend hearings, meet with their legislators, or otherwise conduct business at the Capitol. In fact, visitors of all ages, as well as hundreds of public employees and elected officials, eat or purchase food daily at the State Capitol's restaurant, as well as in restaurants in the Bertolino, Finance, Health and Welfare, Keystone, and Labor and Industry buildings.

These restaurants in state buildings were not licensed or inspected since at least the year 2000, and probably longer.

This inexcusable situation was allowed to occur while various state and local officials engaged in jurisdictional disputes and bureaucratic wrangling that spanned several years. Involved were the Department of Agriculture, the Department of Health, the Department of General Services, the Department of Labor and Industry, and the City of Harrisburg (all the eateries are located within the City limits).

- In a letter dated November 17, 1999, an official from the state's Department of General Services informed the then-current food service contractor for the Capitol that, under

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state law, the Department of Health should inspect the sanitary and health care conditions at the Capitol. The City of Harrisburg, said the official, did *not* have jurisdiction to inspect the restaurant in the Capitol.

- In correspondence dated March 20, 2000, the City of Harrisburg’s legal office wrote that the then-Secretary of Agriculture had said that the City of Harrisburg should inspect the Capitol restaurant.
- In a memorandum dated March 28, 2000, counsel for the Department of General Services told counsel for the Department of Agriculture that the Department of Health believed the Department of Agriculture should inspect the Capitol eatery.

We learned during our field work that the City of Harrisburg’s health office has abided by the Department of General Services’ determination that the City of Harrisburg should not inspect the restaurant in the Capitol. Nor has the City of Harrisburg inspected the eateries in the Finance, Health and Welfare, and Keystone buildings (which are state-owned), and the Bertolino Building (which the Commonwealth leases).

We also observed during site visits that the City did issue business privilege and mercantile licenses to eateries in the Capitol, the Finance Building, and the Keystone Building for the 2005 calendar year.

It is important to note that these City-issued licenses provide the eateries only with authority to operate a business within the City of Harrisburg—but the licenses do not mean the businesses are licensed and inspected as eating and drinking establishments under the Public Eating and Drinking Places Law or that they have met cleanliness and food-handling requirements.

When we interviewed officials from the Department of Agriculture, they said they believed that the City of Harrisburg should be the entity to license and inspect the businesses as public eateries. The Department of Agriculture officials further explained they did not want their Department to take on the

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added responsibility for these restaurants in state buildings. The officials noted, however, that Department inspectors would be responsible for inspecting the restaurants upon receiving consumer complaints—but the officials clouded the issue by saying that any such inspections they had performed (for which they could produce no precise data) would have occurred only to address specific complaints, not to provide the public with assurances that the restaurants were in compliance with all cleanliness and food-handling requirements that are evaluated in a regular inspection.

The Department of the Auditor General wrote to the Department of General Services about this serious issue and, in what appeared initially to result in at least a partial resolution, on May 18, 2005, the Department of General Services replied that it had arranged for the Department of Agriculture to inspect the restaurants in the Capitol and the Keystone building.

Said the Department of General Services in its correspondence: “By the time you receive this letter, the inspection may have already occurred.”

Five months later, by October 19, 2005, the inspections had still not occurred. Auditors verified that the eateries in the Capitol and the Keystone building continued to operate with no license and no inspection.

Auditors also verified that the other four eateries named previously—in the Bertolino, Finance, Health and Welfare, and Labor and Industry buildings—continued to operate with no license and no inspection as of mid-June 2005. Months earlier, as part of the bureaucratic finger-pointing, the Department of General Services had maintained that it was not responsible for these eateries because they were operated under a special program administered by the Department of Labor and Industry’s Bureau of Blind and Visual Services.

When auditors discussed this matter with Labor and Industry, however, officials there pointed to the Department of Agriculture and the City of Harrisburg.

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When state agencies hide behind their own bureaucracies as these agencies did, nothing gets done until someone steps up to take responsibility. Accordingly, this finding in particular shows why it is so critical for one state agency to vest itself with coordinating the licensing and inspection procedures and inspection results statewide. As stated in the previous finding, this authority should be assumed by the Department of Agriculture.

### **Recommendation**

20. The Department of Agriculture should take the lead to resolve the bureaucratic disagreements that have obstructed the annual licensing and inspection of the eateries that operate in the state-owned or state-leased office buildings—including Pennsylvania’s Capitol. *Target date: Resolve immediately*

### **Summary of Department of Agriculture’s response and Comments by Department of the Auditor General**

*See Appendix C beginning on page 62 for the Department of Agriculture’s full response to this audit report. Pages 13 and 14 of that response address Finding 5 in detail. Here, however, we can summarize the Department’s response as follows:*

*Summary of the  
Department of  
Agriculture’s  
response  
begins at right.*

*The Department of Agriculture writes, “The Auditor General seeks to vest the Department of Agriculture (Department) with authority that doesn’t exist under any statute in this Commonwealth” and that the performance audit “alleges” that the Department of Agriculture “should license and inspect the establishments located within the jurisdiction of the City of Harrisburg and the Capitol Complex.” The Department’s response goes on to discuss the Public Eating and Drinking Places Law and the Pennsylvania Local Health Administration Law and to explain its position further. It ends its response by saying that it is “willing to work with the two entities [i.e., the*

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*Pennsylvania Department of Health and the City of Harrisburg] that currently have legal authority to inspect eating establishments in the Capitol Complex,” but that the Department of the Auditor General should suggest a legislative amendment if it thinks the Department of Agriculture should do the inspecting and licensing of those places.*

*Our comments follow:*

*Comments by  
Department of  
the Auditor  
General begin  
here.*

*The Department of Agriculture’s response erroneously claims that we are seeking to vest the Department with authority it does not have under state law. In fact, our finding does not even discuss the Department’s authority with respect to restaurants in state-owned or state-leased buildings nor does the finding state that the Department should itself have inspected or licensed the restaurants.*

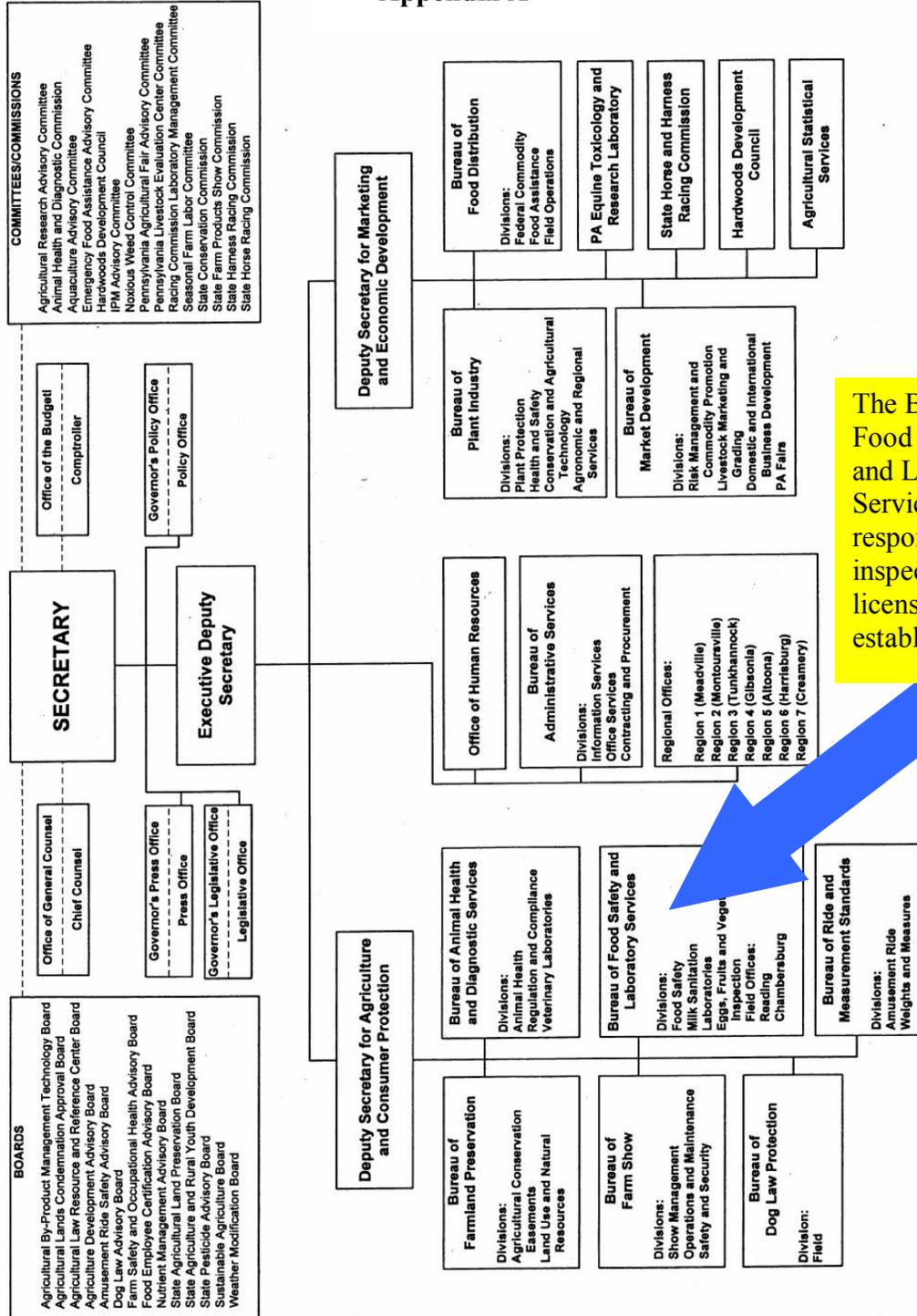
*To the contrary, the entire basis of our finding is that in the face of bureaucratic disagreements of which it was well aware, the Department of Agriculture failed to exercise the basic leadership necessary to help seek an amicable resolution to the disagreements that prevented these restaurants from meeting the minimum prerequisites—inspection and licensure—for operating within the Commonwealth. As pointed out in the finding and recommendation, respectively, the Department “failed to ensure” that these restaurants were licensed and inspected and “should take the lead to resolve the bureaucratic disagreements.”*

*As the agency with primary responsibility for the inspection and licensure of restaurants in the Commonwealth and the fact that the underlying jurisdictional dispute involved two sister agencies, the Department of Health and the Department of General Services, in addition to the City of Harrisburg, it is entirely reasonable to expect the Department of Agriculture to have sought to assist the agencies in reaching an amicable resolution to the dispute. It is reassuring that the Department now acknowledges its willingness to “work with the two entities that currently have legal authority to inspect eating establishments in the Capitol Complex.”*

Appendix A

DEPARTMENT OF AGRICULTURE

10/3/03



The Bureau of Food Safety and Laboratory Services is responsible for inspecting and licensing food establishments.



Inspection and Licensing of Restaurants  
and Other Eateries:  
A Performance Audit of the  
Pennsylvania Department of Agriculture

November 2005  
Department of the Auditor General

Appendix B

AFSLS-266 PENNSYLVANIA DEPARTMENT OF AGRICULTURE		INSPECTION REPORT		INSPECTION DATE	
Bureau of Food Safety and Laboratory Services				MO. DY. YR.	
ESTABLISHMENT NAME		COUNTY	CODE	ID NUMBER	REGION
STREET ADDRESS		CITY, STATE, ZIP			TYPE ESTAB.
OWNER'S NAME			PERSON INTERVIEWED		TITLE
<small>Based on an inspection this day, the items circled below identify the violations in operations or facilities which must be corrected by the next inspection or such shorter period of time as may be specified in writing by the regulatory authority. Failure to comply with any time limits for corrections specified in this notice may result in cessation of your Food Service operations.</small>					<b>License Exp. Date</b> LICENSE NO.
<b>ITEM</b>	<b>WT.</b>	<b>ITEM</b>	<b>WT.</b>	<b>REASON</b>	
FOOD 01* Source; sound condition, no spoilage	5	WATER 27* Water source, safe, hot and cold under pressure	5	SURVEILLANCE <input type="checkbox"/> N	
02 Original container; properly labeled	1	SEWAGE 28* Sewage and waste water disposal	4	COMPLAINT <input type="checkbox"/> C	
FOOD PROTECTION 03* Potentially hazardous food meets temperature requirements during storage, preparation, display, service, transportation	5	PLUMBING 29 Installed, maintained	1	COMPLIANCE <input type="checkbox"/> K	
04* Facilities to maintain product temperature	4	30* Cross-connection, back siphonage, backflow	5	G-SAMPLING F-FIRE S-SURVEY L-FLOOD <input type="checkbox"/>	
05 Thermometers provided and conspicuous	1	TOILET AND HANDWASHING FACILITIES 31* Number, convenient, accessible, designed, installed	4	REFRIGERATION TEMPERATURES ____ °F ____ °F ____ °F ____ °F	
06 Potentially hazardous food properly thawed	2	32 Toilet rooms enclosed, self-closing doors, fixtures, good repair, clean hand cleansers, sanitary towels/tissue/hand-drying devices provided, proper waste receptacles	2	HEATED FOOD TEMPERATURES ____ °F ____ °F ____ °F ____ °F	
07* Unwrapped and potentially hazardous food not re-served	4	GARBAGE AND REFUSE DISPOSAL 33 Containers or receptacles covered, adequate number, insect/rodent proof, frequency, clean	2	DISHWASHING DATA:	
08 Food protection during storage, preparation display, service, transportation	2	34 Outside storage area enclosures properly constructed, clean, controlled incineration	1	MANUAL	
09 Handling of food (ice) minimized	2	INSECT, RODENT, ANIMAL CONTROL 35* Presence of insect/rodent—outer openings protected, no birds, turtles, and other animals	4	WATER TEMP. ____ °F CHEM SANITIZER TYPE ____ CONCENTRATION ____ PPM	
10 In use, food (ice) dispensing utensils properly stored	1	FLOORS, WALLS AND CEILINGS 36 Floors constructed, drained, clean, good repair covering installation, dustless cleaning methods	1	MECHANICAL WASH WATER TEMP. ____ °F RINSE WATER TEMP. ____ °F FINAL RINSE TEMP. ____ °F	
PERSONNEL 11* Personnel with infections restricted	5	37 Walls ceiling, attached equipment constructed, good repair, clean surfaces, dustless cleaning methods	1	WATER SUPPLY	
12* Hands washed and clean, good hygienic practices	5	LIGHTING 38 Lighting provided as required, fixtures shielded	1	Community ..... <input type="checkbox"/> Non-Community ..... <input type="checkbox"/>	
13 Clean clothes, hair restraints	1	VENTILATION 39 Rooms and equipment vented as required	1	DISINFECTION REQUIRED YES <input type="checkbox"/> NO <input type="checkbox"/>	
FOOD EQUIPMENT AND UTENSILS 14 Food (ice) contact surfaces: designed, constructed, maintained, installed, located	2	DRESSING ROOMS 40 Rooms clean, lockers provided, facilities clean, located, used	1	Residual _____	
15 Non-food contact surfaces: designed, constructed, maintained, installed, located	1	OTHER OPERATIONS 41* Necessary toxic items properly stored, labeled, used	5	RATING SCORE <input type="checkbox"/> PAGE ____ 100 less weight of <input type="checkbox"/> OF ____ items violated → <input type="checkbox"/>	
16 Dishwashing facilities: designed, constructed, maintained, installed, located, operated	2	42 Premises maintained, free of litter, unnecessary articles, cleaning maintenance equipment properly stored, authorized personnel	1	*Critical Items Requiring Immediate Attention	
17 Accurate thermometers, chemical test kits provided, gauge cook (1/4" IPS valve)	1	43 Complete separation from living/sleeping quarters, laundry	1	SIGNATURE OF ESTABLISHMENT REPRESENTATIVE	
18 Pre-flushed, scraped, soaked	1	44 Clean, soiled linen properly stored	1	DATE _____	
19 Wash, rinse water: clean, proper temperature	2			AREA _____ PHONE _____	
20* Sanitization rinse: clean, temperature, concentration, exposure time, equipment, utensils sanitized	4				
21 Wiping cloths: clean, stored, restricted	1				
22 Food contact surfaces of equipment and utensils clean, free of abrasives, detergents	2				
23 Non-food contact surfaces of equipment and utensils clean	1				
24 Storage, handling of clean equipment/utensils	1				
25 Single-service articles, storage, dispensing, used	1				
26 No re-use of single service articles	2				
<b>OFFICE USE ONLY</b>					
ACTION TAKEN	<input type="checkbox"/> N NO ACTION	<input type="checkbox"/> V VOL. ACTION	<input type="checkbox"/> W WARNING LETTER	<input type="checkbox"/> P PROSECUTION	INSPECTION TIME
					HRS. MIN.
					Travel Time
REGIONAL SUPV.	DATE	AGENT'S SIGNATURE	PHONE	Cert. Employee <input type="checkbox"/> Y <input type="checkbox"/> N	AGENT'S ID

## **Appendix C**

The Department of Agriculture's response to this audit report is reproduced on the pages that follow.

# Commonwealth of Pennsylvania



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
DENNIS C WOLFF

November 10, 2005

The Honorable Jack Wagner  
Auditor General  
Commonwealth of Pennsylvania  
229 Finance Building  
Harrisburg, Pennsylvania 17120

Dear Auditor General Wagner:

The Department appreciates the extensive review of the Public Eating & Drinking Places Law (Act 369 of 1945). The report, titled Inspection and Licensing of Restaurants and Other Eateries: A Performance Audit of the Pennsylvania Department of Agriculture, will help finalize a Department-initiated review started more than two years ago. The findings identified are valid and confirm the deficiencies in the current Food Safety law and information management system. The Department previously recognized the shortcomings in the current system and had set in motion a corrective action plan for many of the identified deficiencies to include a **complete replacement** of the antiquated data management system with a robust and modern web-based system.

The new information management system is being developed and installed by Garrison Enterprises, an established company that has designed and implemented other food safety management systems for large-scale jurisdictions. Building on demonstrated performance, we are utilizing their experiences and knowledge to build a proven information management system in the shortest possible timeline to address this critical need. The new system will specifically address many of the audit recommendations for the Bureau of Food Safety such as reporting, tracking, record management, document flow, public access, and overall management of information.

While the Garrison Enterprise Digital Health Department system will address many of the findings of the audit, the Department has also changed internal processes and will propose amendments to the 60-year old Act 369 to better reflect the recent program changes made when the Department adopted the Food and Drug Administration Food Code in 2004 and the added

public safety of having nearly 32,000 food establishment employees trained under the Food Employee Certification Law.

All of these changes were implemented concurrent with the audit period. Each management, regulatory, and legislative change has helped strengthen the Department's oversight of food establishments and better protect our consumers. Of particular significance was the implementation of the Food Employee Certification Law in 2004. This comprehensive law requires all food establishments in the Commonwealth that handle potentially hazardous foods to have a certified management employee on site. This requirement effectively adds full-time, on-site food safety competencies, allowing for continuous monitoring and improvement of the licensed facility. During this same time, the Department promulgated the adoption of the Food and Drug Administration Food Code. Final adoption occurred on December 13, 2003. This comprehensive Code provides authority over all retail food facilities in the Commonwealth. The Code is designed to promote uniform inspections not only in Pennsylvania, but across the nation as well. As part of the Code, Food Sanitarians are required to conduct risk-based inspections, assigning a risk code to items that are associated with causing food borne illnesses. This risk code system is similar to what has been in practice in Title 7, Chapter 78. These new requirements have increased the responsibility on food establishments and magnified the need for the Department to explore more efficient ways of conducting business and managing our record keeping and inspection system. With a technology assessment conducted by a private vendor beginning in January 2004, the Department launched the implementation of a new inspection and record-keeping system. Staff training and field-testing will begin this November with full-scale operation by January 2006.

These improvements, coupled with the other recommendations of the audit, will be beneficial to protecting public safety.

Since technology will play a critical role in the Bureau of Food Safety moving forward and addressing the findings and recommendations of the audit, particularly Finding 1, the following text will respond to these issues and establish how the Department of Agriculture is making corrective actions toward rectification with the implementation of the Garrison Enterprise Digital Health Department system.

For reader ease, the Audit Text appears first, followed by the Department of Agriculture Response.

**Audit Text** – Although Department of Agriculture officials were unable to segregate first-time licensees from the others for auditors to test...

**Department Response** – The new system will contain validation checks and data integrity checks that will allow for histories and dates of inspections to be stored indefinitely. The ability to 'mine' this data will provide for invaluable historical record keeping and reporting.

**Audit Text** – Renewal licenses were issued blindly and in violation of law... They did not check to see whether or not the establishment was inspected, nor did they verify whether any previously cited violations were corrected.

**Department Response** – The new system will have a rule-based logic incorporated that will not allow the issuance of a license without compliance to the regulations.

**Audit Text** – Among the 48,828 food businesses in total regulated by the Department of Agriculture, there were nearly 9,000 that were not inspected for up to two years or more.

**Department Response** – Reporting was a key flaw in the old data system. The new solution will provide for a robust reporting console that will allow management the ability to see where backlogs are occurring and address these issues accordingly.

**Audit Text** - ...the Department said it did not keep numbers or dollar amounts of fees that inspectors collected.

**Department Response** – Financial handling is incorporated into the new system. All transactions for fee collection, balances, fines, etc. are handled. In addition, as a service to the customer, the new system will also allow for online credit card payments for fees.

**Audit Text** – Bad or outdated data.

**Department Response** – The new system will incorporate data validity and data integrity checks that will help to keep data organized and current. Since the new system is single data platform, unlike the current system, there will be no utilization of temporary records. This will eliminate the effects of ‘unsynced’ data.

**Audit Text** – No reports for use as management tools.

**Department Response** – The new system has a very robust reporting element that will provide for a plethora of reports that can be made available to management as tools for determining shortcomings, base employee performance, establishing metrics, and look for trending not only in performance measures but in other critical areas such as offense types, reoccurrences, and repeat violators.

**Audit Text** – No shared access for other agencies.

**Department Response** – The new system is a totally online system with integrated role-based security. Access can be provided to anyone the Department deems appropriate and assign different levels of access. Since the solution is web-based, nothing more than a simple web browser such as Microsoft Internet Explorer is needed to access that system. This will cut down tremendously on costs and maintenance.

**Audit Text** – No integration of data from another bureau within the Department of Agriculture.

**Department Response** – As addressed in this audit text, the new system will integrate the food safety laboratory data into the inspection process. This way a single solution is established to correlate data between inspections and testing so that a more comprehensive and effective relationship between the two processes can be established.

**Audit Text** – Delays and disconnects.

**Department Response** – While connection problems can and will always exist due to their inherent finicky nature, the Department is addressing this issue by making available more ways for an inspector to find a successful connection. First, the deployment of cellular internet cards on the tablet personal computers will be issued to every field inspector. This will allow for an inspector to have a ‘live’ connection to the internet anywhere a cellular network provider is located. The current provider will be Cingular Wireless and their associate wireless providers. Coverage appears to be fairly widespread for the Commonwealth, especially where a majority of the inspections will take place. If a cellular wireless connection is not available, the new system can go into a ‘disconnected mode’ that will still allow an inspector to conduct an inspection but the data is not immediately posted to the master database until a new connection is established. To clarify: an internet connection is not needed for the inspector to perform their immediate inspection duties. An internet connection is needed to post the data back to the main system, though. By management directive, the inspectors will be required to sync this data daily, most likely at the end of the day, if a connection was not present during the actual inspection. If an inspector is in an area that never has cellular wireless internet available (highly unlikely), the use of the Commonwealth-provided RADIUS dial up will still be available. A sync on the new system as compared to the old system will be much shorter due to the ‘thin’ nature of the data and the newer technology it utilizes.

**Audit Text** – 10-day turnaround from inspection to posting.

**Department Response** – As stated earlier, data entry will either be real time ‘live’ entry via the wireless cellular connection or be required by mandate to sync their data daily via RADIUS or any other available internet connection.

**Audit Text** – Problems in the field.

**Response** – Field inspectors will have direct access to the system in the field to make real time updates and modifications where applicable. In response to the hardware issues, the Department has purchased new HP tc1100 tablet pcs for each inspector and field person. Spares were also purchased and since the new system is web based, no special installation of software is ever needed and all system updates are done on Garrison’s end. There will not be a case when an inspector should be without a functional device.

**Audit Text** – Problems with system maintenance.

**Department Response** – The Garrison solution is completely hosted outside the Commonwealth’s network. Garrison has four data centers located across the United States and has a service level agreement with financial penalty if the system is not up 99.999% of the time. This is a contractual agreement in which they are bound. Garrison’s maintenance contract also provided 24/7, 365 technical support and any changes made to existing laws or mandates that would require modifications to the system are included at no additional charge.

**Audit Text** – Inspection results were not available on the Department’s Web Site.

**Department Response** – Through the Garrison system, all results can be published to the internet for the public to access through an easy to utilize search function.

**Audit Text** – The Department of Agriculture had no procedures in place to monitor or coordinate the activities of all the local government entities that oversee eating places in the Commonwealth.

**Department Response** – The Department of Agriculture submitted to the OA/OIT Community of Practice process for FY2006-2007 a request for project funding and approval to roll out the Garrison system statewide and make it available for implementation to all Act 315 jurisdictions and small government entities. This would effectively create a single source-monitoring network for the entire Commonwealth that would allow for extremely robust reporting, monitoring, and early detection of food safety issues and complaints. The request was approved but without funding.

### **Finding 1**

**Even though the Department of Agriculture may have inspected restaurants, bars/clubs, and similar food establishments before issuing licenses initially, it often failed to inspect them during the next year prior to renewal and, instead, renewed licenses blindly. Patrons therefore had no assurances that such businesses met even the most basic sanitation and food handling conditions required by law.**

### **Response**

The Department will work diligently to ensure inspections of food facilities occur before renewals of licenses are issued. While Act 369 does not provide authority for the Department to assign priority categories, the FDA Food Code, adopted by the Commonwealth in December 2003, and several inter-related regulatory components do recognize this as an acceptable practice. To put this in perspective, a little history is helpful.

The current Public Eating & Drinking Places Act (Act 369) was enacted in May 1945. At that time in the Commonwealth’s history, the term “public eating or drinking place” had a limited meaning in terms of venue. The term at that time would have applied to the typical restaurant, hotel dining room, or local tavern or pub. The historic understanding of these more limited types of public eating or drinking places is evidenced further by the definition of “license” within the Act, which “shall mean a grant to a licensee to conduct a **restaurant**, as defined in this act.” Today, sixty years later, the term “public eating or drinking place” has extremely broad connotations as defined in the act (**any place** within this Commonwealth where food is served or provided for the public, with or without charge). The types of food facilities within this Commonwealth today meeting this definition include almost **any** retail facility. With the evolving business concepts of “one stop shopping and convenience,” the legislative definition of public eating or drinking place now includes everything from the once traditional food store, a large retail super center, having a café and deli sandwiches to order, to the corner gas station which today is now a convenience store, having a hot dog roller and a soda machine. The old

traditional lines no longer exist, between what was a restaurant or pub in 1945 to be regulated by Act 369, and what are retail food stores to be regulated today by the Food Act (Act 70).

The Food and Drug Administration with the cooperative efforts of academia, industry, and state and local regulatory agencies, publishes a national Model Retail Food Code. The FDA Food Code is agreed upon by the involved entities to be the most current science and risk based assessments of retail food safety. The FDA Food Code standards directly incorporate the establishment of a prioritized inspection schedule through risk categorization of food facilities. In December 2003 with the passage of Title 7, Chapter 46, PA Food Code regulations, the Department updated its retail food standards to exemplify the FDA Model Retail Food Code, thus becoming uniform with surrounding state food regulations, and to assure the residents of this Commonwealth that the most current food safety knowledge and requirements were being implemented in all retail food facilities within this Commonwealth.

Prioritization of inspection frequency as recommended in the FDA Model Retail Food Code (§8-401.20 and Annex 3 – Public Health Reasons) is to be risk based and determined by the establishment's potential for being a vector of food borne illness. The Department established a general written policy for establishing prioritizing of facility inspection schedules based strictly on the type of food service and particular foods served, but allowed for evaluation of prioritization by Food Sanitarians based on their firsthand knowledge of a facility's past performance with the critical requirements of the regulations and numerous or repeat non-critical violations, normal hazards associated with particular foods, type of operation (including food storage, preparation, and service), and the numbers of people served. All of these performance and risk-based factors used to assess a prioritization inspection schedule for a facility are outlined within FDA's Model Retail Food Code (§8-401.20), and have been applied by this Department in its food inspection program for many years.

In November 2004, the Department enrolled with FDA to participate in the FDA Recommended National Food Regulatory Program Standards. The standards are meant to serve as a guide for design and management of regulatory retail food programs. The nine standards apply to the operation and management of a regulatory retail food program focused on the reduction of risk factors known to cause food borne illness, other factors that contribute to food borne illness, and promotion of active managerial control of all factors that may cause food borne illness. Evaluating the Department against the nine Standards will give a picture of the effectiveness of the food safety interventions imposed by the regulations and implemented by the food industry within the Commonwealth. Standard No. 3 is an evaluation of the regulatory retail food inspection program based on Hazard Analysis of Critical Control Points (HACCP) principles. Among the requirements for compliance with this standard is that the Department's retail food inspection program "develop and use a process that groups food facilities into at least three categories based on potential and inherent food safety risks" and that the Department "assigns the inspection frequency based on the risk categories to focus program resources on food operations with the greatest food safety risk."

Both the FDA Recommended National Retail Food Program Standards and the FDA Model Retail Food Code can be accessed through the Internet at <http://www.cfsan.fda.gov/-ear/retail.html>

Listed below are actions recently taken by the Department to meet the licensing requirements of Act 369:

- Directed the issuance of a policy memo to inform Food Sanitarians and Food Sanitarian Supervisors to immediately stop accepting cash for payment of licenses or registrations.
- Authorized overtime for Food Sanitarians to reduce backlog of past due inspections.
- Authorized filling of recently vacated Food Sanitarian positions.
- Directed Regional Food Safety Supervisors to assist with inspections.
- Authorized Human Resources to pursue rehiring several recently retired Food Safety Sanitarians as annuitants to help with inspection backlog.
- Authorized the possible reassignment of Food Sanitarians to priority areas to help with inspection backlog.
- Authorized the hiring of temporary full-time Food Sanitarians to assist with inspection backlog.

## **Finding 2**

**When the Department of Agriculture *did* inspect restaurants and other food service businesses and found violations during our audit period, it did not follow up to make sure that violations were corrected, it rarely sought fines, and it suspended or revoked no licenses. Bad businesses therefore had little incentive in change, and their patrons were not afforded reasonable protection from health risks even though the Department of Agriculture knew that the risks were present.**

## **Response**

The Department disagrees with the Auditor General's assessment of the best business practices for regulatory enforcement and the most effective means of public health protection regarding public eating or drinking places within the Commonwealth.

The Department does have a policy in place for determining follow-up to inspections conducted at facilities, to include re-inspection, warning letters, and/or prosecution. The Department has and will continue to pursue prosecutions of food facilities where warranted. The Department policy is to take action that will immediately protect the public health, by employing disposals of any adulterated or noncompliant foods found in a facility and closure of facilities that have violations of an imminent health hazard. The Department has employed these measures since 1995, but in particular codified them in sections 46.441 and 46.114 of Chapter 46, PA Food Code, adopted in December 2003.

Act 369, the Public Eating or Drinking Places Act, specifically outlines in Section 655.13 the "Punishment for Violations." Under the provisions of the Act, all prosecution actions must be filed in the office of the local District Justice (Section 3(d) of Act 53 of 1978) with minimum

finest of \$10 and maximum fines of \$50 for the first guilty offense and minimum of \$25 for subsequent offenses, paid to the county. As the Department has experienced first hand, District Justices have differing requirements on filing of prosecutions (some as criminal complaints, some as 'traffic' complaints, or even on a specific county form) and varying viewpoints on the seriousness of violations of the food laws.

Three facilities identified in the Auditor General's report, for which the Department had instituted proceedings to prosecute, illustrate the problems associated with prosecution under the offices of the District Justice. Department policy states that re-inspections of firms shall occur 14 to 30 days following the prosecution termination (either dismissed by the District Justice, or fine is paid by the facility), but many times the untimeliness of the process hampers protection of the public health. One facility was inspected on 05/17/04, a prosecution was requested, and a hearing date set in July. The facility owner did not respond to the initial summons for the hearing and a Constable was dispatched by the District Justice's office to deliver the summons. A hearing was held in September, but the District Justice refused to assess fines until the Department conducted a compliance inspection (on 10/05/04). Despite not responding to the first summons, and because the facility had corrected the violations, a minimal fine of \$25 was assessed. A second facility was inspected on 03/15/04 and a prosecution instituted. The facility owner did not respond to the initial summons, and the District Justice delayed the hearing three times. When the hearing was held on 11/16/2004 the District Justice ordered the Department to conduct a re-inspection, which was completed on 11/22/04, the inspection indicated similar violative conditions corrected at the time of inspection. The District Justice fined the facility, and ordered an additional follow-up inspection in January. The follow-up inspection was conducted on January 26, 2005 and resulted in a closure of the food facility for the same repetitive violations. On January 27, 2005 the facility was found to have reopened in violation of the Department's closure order and the local police were summoned. The facility was closed by police and did not reopen until February 17, 2005, after mandatory food safety training conducted by the food sanitarian. The remaining food facility inspected on 04/27/05 was prosecuted and paid a small fine; however, a follow-up was not conducted until 10/05/04 because the violative owner offered the business for sale.

The Department will propose legislative changes to make fines more relevant and consistent. The Department also feels that the mechanism for enforcement be evaluated, perhaps by changing Act 369 to allow for the Department to assess civil penalty fines or criminal penalties as authorized for food establishments under the purview of Act 70, the Food Act (31 P.S. §§20.1-20.18). Barring this change, however, the Department feels that heavily utilizing disposals of food and closure of food facilities is a much greater financial deterrent to noncompliant food businesses, as well as being extremely more effective and timely in protecting the public health than institution of prosecutions within the District Justice system.

When looking at the 6-month time period used in the Auditor General's report, January 1, 2004 through June 30, 2004, the Department instituted closures of 47 food facilities within the Commonwealth. Evidence of the Department's process for closure of food facilities occurred with a food sanitarian while conducting a joint inspection with an Auditor. Although the Food Sanitarian (who is no longer employed by the Department) did not follow proper protocol by allowing the facility to post notice of closure due to plumbing problems, when in fact the facility

was closed for a rodent/insect problem, the closure resulted in the immediate and efficient protection of the public health. Closure of the facility forced the establishment operator to abate the violations quickly or continue suffering the financial losses of having the business closed. **During the 2004 calendar year the Department instituted documented 1,077,167 pounds of food disposals valued at \$1,397,461. A \$1.4 million loss to the Commonwealth retail food industry is a substantial enforcement incentive.**

As the Performance Audit points out, Act 369 Section 655.11, revocation of license for failure to correct violations, states that food facility operators shall have their license revoked for chronic violations of the act or regulations. However, Section 655.6, Powers of the Department, states that the Department may revoke or suspend a license only after investigation **and hearing** at which the licensee is afforded the opportunity to be heard, and that all suspension or revocations, along with reasons, and notice of hearing, must be given in writing to the food facility licensee. The particular process for having a required hearing before the Department taking 'Official Action' to revoke or suspend a license has also been detailed with the passage of the Commonwealth's Sunshine Act of 1986. The Department feels this is an onerous, time consuming, financially burdensome process and does not serve to protect the health of the Commonwealth consumer. The mechanisms of enforcement, which are more financially expedient, efficiently use Food Sanitarian time, and result in immediate protection of the public health, are those of mandatory food disposals and food facility closures.

In the Performance Audit, a summary of the inspection process was outlined, but contained some misconceptions and resulted in some skewed findings. In September of 2002, a comprehensive three-day training session was conducted for all Food Sanitarians and Supervisors regarding the implementation, interpretation, and scientific foundations for the new Food Code (Chapter 46) regulations that were being promulgated by the Department. The training included a section-by-section review of the proposed regulations, and included several hands-on training exercises. At this time, the Food Safety staff was introduced to the concept of "Risk Factor" and "Good Retail Practice" violations. The concepts of Risk Factors & Public Health Interventions and Good Retail Practice violations are derived from the FDA (Food & Drug Administration) Model Retail Food Code and are used in place of the antiquated concepts of critical and non-critical violations. Risk Factors & Public Health Interventions have been studied extensively by FDA & CDC (U.S. Centers for Disease Control) and are defined as those improper practices and procedures identified as the most prevalent contributing factors of food borne illness or injury and the public health control measures needed to prevent food borne illness or injury. Good Retail Practices are other preventative measures to control addition of pathogens, chemicals, and physical objects into foods.

Additionally, in September of 2003, the annual Food Safety staff training meeting included two days of training on the administrative implementation of the upcoming PA Food Code regulations and reinforced the concepts of Risk Factor & Public Health Interventions versus Good Retail Practice violations. The staff was also introduced to the newest version of inspection form being used nationally, to familiarize them with the Department's intent to modify the current 44-point inspection form. The inspection form, which will be implemented with the new Garrison Enterprise Digital Health Department system, will be the newest inspection form in FDA's Model Retail Food Code and will incorporate concepts of Risk Factor/Public Health Intervention violations and Good Retail Practice violations.

At the 2003 Food Safety staff meeting, the staff was also provided with a listing of the specific PA Food Code sections in relation to where they should be debited on the 44-point inspection form, and informed that the concepts of critical/non-critical were not perfect on the old inspection form. Food Sanitarians were told to use their judgment and training with respect to risk factors to assess the critical nature of violations under the 44-point system. The Auditor General's assessment of 13 critical items is correct under the old 44-point system, but not under the concepts of risk factors/public health violations. Of the 13 listed critical violations in the Auditor General's report, only seven of these are considered under current food safety science knowledge, and national standards as being risk factor violations.

Under the Department's current inspection policy, facilities may receive a "no action" (N) code if a Food Sanitarian finds no imminent food safety hazards or risk factor violations. If a facility has a risk factor violation but it is corrected immediately, the Food Sanitarian has the latitude to make a "no action" (N) judgment based on whether the facility operator understands the potential risk factor violation and if it is likely to occur again.

"Voluntary Action" (V) inspections can be assigned by a Food Sanitarian and in principle have the meaning that the Food Sanitarian is not comfortable with the commitment of the food facility to abate the violations on the inspection report. Uncorrected risk factor violations generate a "voluntary action"; however, not all 'critical' violations under the old 44-point are considered risk factors and will necessarily require a "voluntary action". The Food Sanitarian may also assign a "voluntary action" code to a food facility that may have no risk factor violations, but has had repeated, chronic "good retail practice" violations. "Voluntary Action" (V) codes require the Food Sanitarian to enter a reschedule date, based on their determination of the types of violations and the time frame for corrections discussed with the operator, but can range anywhere from one day, if the inspection resulted in a closure, to six months if the inspection showed repeat minor "good retail practice" violations.

Of the 11 facilities alleged in the Performance Audit to have not had follow-up inspections as of 08/12/04, four facilities did have re-inspections on or between 08/12/04 and 08/19/04. One facility was re-inspected on 11/03/05, and one firm was incorrectly coded as a voluntary action, but the reschedule date indicated the Food Sanitarian did not intend to re-inspect. The remaining five firms all had delayed re-inspections that ranged from 3 to 13 months, due to staff problems from military leave, territory reassignments to other Food Sanitarians and miscommunication, intensive work schedules due to preseason farm labor camp inspections, and a verbal phone agreement with the facility operator to modify the compliance date, and oversight. The Department has already recognized the difficulties in manually tracking facilities that require follow-up inspections. The current computer system generates reports of inspections on an erratic monthly basis, and most Food Sanitarians are attempting to track and schedule their inspections manually. These experiences helped shape the functional requirements of the new information management system. The Garrison Enterprise Digital Health Department system to be implemented by January 2006 will automatically track reschedule dates of facilities, and automatically schedule a Food Sanitarian's workload based on compliance importance and geographic efficiencies. The new system will allow for easy and efficient auditing of any Food Sanitarian, regional or statewide workload by staff.

Food Sanitarians may also request “Warning Letters” (W) when they feel this is the appropriate action to take. Warning Letters are generally requested when a facility has been subjected to a closure, has had repeat risk factor violations, or has had chronic non-compliance with all other good retail practice violations. Issuance of Warning Letters can occur in any of the Department’s food programs and not only within the Public Eating or Drinking Place program. Warning Letters do state that further enforcement actions could be taken by the Department, but does not specify because each food program has their own legal mandates on what the particular compliance action might be. The Department does not feel it is advantageous to “threaten” a facility with a particular form of compliance. As stated previously, the most effective form of compliance is oftentimes the closure of a facility, and not prosecution, or ‘revocation’ of a license.

Three firms were reported in the Performance Audit as not having follow-up action after a warning letter as of 08/12/04. One firm did in fact have a re-inspection, which occurred on 08/13/04. Two firms, upon investigation, were actually miscoded in the computer system. One firm’s action code was modified from a Warning Letter on 10/28/04 upon review by the Food Safety Supervisor. The second firm had a Warning Letter requested by the Food Sanitarian, but later the Food Sanitarian requested the Food Safety Supervisor change the Warning Letter request to a Voluntary Action due to the food facility operator’s cooperation. The Warning Letter was never issued, but due to oversight by the Food Safety Supervisor, the action code was not corrected in the computer system.

The Department has recognized many of the errors in coding and problems with the existing computer system that have resulted in oversights in follow-up and miscoding. Again, the Department is completely replacing the existing computer system with the new Garrison Enterprise Digital Health Department system to address many of these issues. The Department agrees with the Performance Audit recommendation that imposition of re-inspection fees for non-compliant food facilities would aid in compliance. Many local and county health departments have employed this practice as an effective compliance tool.

### **Finding 3**

**The Department of Agriculture did not readily provide the public with useful information about restaurants and other food service businesses with violations. Citizens thus could not easily counteract the Department’s poor inspection follow-ups and weak enforcement attempts by getting enough information to make their own decisions about patronizing unclean or unsafe eating places.**

### **Response**

The Department believes it is the public’s right to know the condition of a food establishment that they patronize and agree that they should be notified by some means. And again, we have taken steps to incorporate this feature into the new Garrison Enterprise Digital Health Department system. Equally important, however, we believe a business has the right to have an accurate inspection report posted. We must be very careful not to mislead the public while trying to inform them.

The Department is aware of misleading inspection reports where it pertains to a score, making it difficult to post results on the Web before and during the audit period. The current inspection form allows for scores, which in some cases are misleading and not reflective of the actual conditions. The new inspection report that will be used is the Digital Health Department inspection system, which will be risk based without a score.

The audit states that there is no single toll free number for people to use to voice complaints concerning restaurants. However, there is a toll free number published for the Pennsylvania Department of Health, which allows callers the option to choose 'Restaurant'. That number is 1-877-PA HEALTH. If the call is in reference to a restaurant, the caller will be prompted to press or say six. That will automatically connect to the Pennsylvania Department of Agriculture, Bureau of Food Safety. Once they are in contact with the Bureau of Food Safety, the Bureau will handle the complaint or direct them to the appropriate Local Health Jurisdiction.

#### **Finding 4**

**The Department of Agriculture had no procedures in place to monitor or coordinate the activities of all the local government entities that oversee eating-places in the Commonwealth. Restaurant patrons therefore could not look to a single source to ensure that all eating establishments in Pennsylvania were safe and clean.**

#### **Response**

In accordance with Act 369 of 1995, Act 315 of 1951, and Act 70 of 1994, the Pennsylvania Department of Agriculture, Food Safety and Laboratory Services have signed Memorandums of Understanding (MOUs) with six local and county health departments. By entering into this agreement, the Department is accomplishing cooperation as well as oversight from each of these regulatory food inspection agencies. Through these MOUs, we not only prevent duplication of inspection, but also maintain a close working relationship and share ideas to employ a better food safety system in Pennsylvania. The Department will continue to seek these types of partnership agreements with other health departments.

The Department of Agriculture Bureau of Food Safety works diligently to coordinate activities between the Local Health Departments through voluntary means in the absence of regulatory mandates. We meet with all Act 315 Health Departments Quarterly and offer training to all 206 Local Health Departments by way of the State Health Department.

The Department has contacted and met with all Act 315 Health Directors encouraging them to use the Garrison Enterprise Digital Health Department system program, to discuss adoption of the Food Code, and any other topic of interest that promotes uniformity and cooperation.

To help foster more uniformity and cooperation, the Department applied for a CDC grant through the Pennsylvania State Health Department. If funded, this would allow the local Health Departments to participate in the Garrison system and enhance the Commonwealth's ability to detect trends related to food borne illnesses and better respond to public concerns.

### **Finding 5**

**The Department of Agriculture failed to ensure that restaurants operating in the state’s own backyard were licensed and inspected—specifically, restaurants in the State Capitol itself and in other state-owned or state-leased office buildings. These restaurants serve thousands of people daily who visit, work in, or represent state government, including Pennsylvania’s lawmakers, yet the state did not abide by its own laws to ensure these eating places were safe and clean.**

### **Response**

The Auditor General seeks to vest the Department of Agriculture (Department) with authority that doesn’t exist under any statute of this Commonwealth. The Performance Audit alleges that the Department should license and inspect the establishments located within the jurisdiction of the City of Harrisburg at the Capitol Complex. However, there is absolutely no legal basis for this assertion. As with any executive agency, the Department can only perform those functions vested in it under law.

Under the existing laws of the Commonwealth, there are two statutes that generally regulate the licensure and inspection of restaurants. These laws are the Public Eating and Drinking Places Law and the Pennsylvania Local Health Administration Law. Pursuant to the provisions of these laws, the Department may only inspect and license an establishment where there is no local government regulation (inspection) and licensure. Based upon the existing law, licensure and inspection of eating establishments located in the city of Harrisburg resides with the City. The fact that the City of Harrisburg has a program to license and inspect restaurants within its jurisdiction divests the Department of the authority or ability to license establishments within Harrisburg.

While it is clear that the Department cannot license eating establishments within the City of Harrisburg, the possibility also exists that in limited circumstances the City of Harrisburg may not be vested with the authority to license certain establishments. Under the provisions of the Act of May 21, 1943 (P.L. 595, No. 259), 71 P.S. §§1565.1-1565.5, if (1) The Commonwealth is "...unable to secure a suitable tenant or tenants for the operation of a restaurant or restaurants in the State Capitol and other State office buildings;" and (2) the Commonwealth establishes, operates and maintains the restaurant, in the absence of the availability of an acceptable tenant, then the Department of Health is required to inspect these premises. If this factual situation were to occur (i.e. a tenant for the cafeteria were not secured and the Department of General Services directly operated the eating establishment), the Department and Health would seek to enter an MOU where Health would delegate their authority under the existing law to the Department in order to use the Department’s staff and expertise to facilitate proper inspections. However, as the situation currently exists, the Commonwealth does not operate eating establishments but contracts with private entities to furnish these services. As such, these private entities are subject to the existing laws that govern the licensure of eating establishments.

While the Department clearly lacks the legal authority to license eating establishments within Harrisburg, in order to assist in public safety we have done “courtesy” inspections whenever requested. While we have inspected these premises, we cannot require licensure due to a lack of statutory authority. In addition, we have worked to facilitate an agreement with the City of Harrisburg that would do the following: (1) Harrisburg would license the restaurants at issue (as

"public eating and drinking places") and retain the licensing fees; (2) PDA would inspect these restaurants on Harrisburg's behalf and share reports of violations with Harrisburg; and (3) Harrisburg would prosecute any violations.

While the Department is willing to work with the two entities that currently have legal authority to inspect eating establishments in the Capitol Complex, if the Auditor General believes that the appropriate solution to this matter is the inspection and licensure of these establishments by the Department, then it should suggest that a legislative amendment clarifying this matter be enacted. While the Department would be amenable to a legislative fix that would clarify this matter, it cannot agree with a conclusion that has the Department arbitrarily assuming a regulatory scheme contrary to that established by the legislature.

### **Summary**

The Department would like to thank the Auditor General's Office for conducting an extensive review of the Bureau of Food Safety and Laboratory Services, Food Safety Division. The Department feels confident that our corrective action plan coupled with other recommendations in the audit will further enhance our mission to better serve, inform, and protect the public. The pursuit of improved food safety methods through new science as well as recommendations from CDC, FDA, and USDA will continue to be a priority. The auditors and this Department share the same overall goal to protect the Pennsylvania consumer and those that patronize the food establishments in the Commonwealth. Again, we thank the Auditor General's team for their dedication and for all the help they have provided for the enhancement of this Bureau.

Sincerely,

A handwritten signature in black ink, appearing to read "D Wolff". The signature is written in a cursive, flowing style.

Dennis C Wolff

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