



Jefferson County

Consumer Protection:
Accuracy of Weights and Measures

S9-24-3 | September 2024

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Report Highlights

Jefferson County

Audit Objective

Determine whether the Jefferson County (County) Department of Weights and Measures (Department) completed required testing of all weighing and measuring devices used to price goods and whether complete records were maintained.

Key Findings

The Director of Weights and Measures (Director) did not complete all required testing of weighing and measuring devices or maintain complete inspection and investigation records as required by New York State Department of Agriculture and Markets regulations and article 16 of the New York State Agriculture and Markets Law (AML). As a result, consumers are at increased risk of paying more than necessary for goods and services. Specifically:

- Thirteen of 127 devices that we reviewed were not inspected as required.
- There was no system in place to maintain a complete and accurate master list of businesses and the inventory of devices required for inspection. As a result, two of the five businesses we tested during the audit were not included in the Department's master list of 407 businesses.

The Department had adequate documentation and procedures in place for addressing consumer complaints and performing price accuracy tests.

Key Recommendations

- Perform required testing in accordance with New York State Department of Agriculture and Markets regulations and AML.
- Maintain a complete inventory of all businesses.

County officials agreed with our findings and indicated they plan to initiate corrective action.

Audit Period

January 1, 2022 - September 30, 2023

Background

The County, located in the North Country region, is governed by an elected 15-member Board of Legislators (Legislature).

The appointed County Administrator (Administrator) is responsible for the overall administration of County government at the Legislature's direction.

The Director, who is assisted by the Assistant Director of Weights and Measures (Assistant Director), is responsible for the day-to-day operations of the Department.

The County has an inter-municipal agreement with Lewis County to also complete the required testing of all weighing and measuring devices within Lewis County. Lewis County was not included within the audit scope.

Quick Facts

County Population	116,723
Number of Devices ^a	2,644
Businesses on Department Master List ^b	407

Department Budget

Revenues	\$85,341
Expenditures	\$205,923

a) As reported in the Department's 2022 Annual Report

b) As provided by the Department

Accuracy of Weights and Measures

New York State's weights and measures program is a cooperative effort of State and local offices enforcing article 16 of the AML. The New York State Department of Agriculture and Markets' State Bureau of Weights and Measures (Bureau) has jurisdiction over the State for the enforcement and monitoring of compliance with the statutory requirements related to weights and measures as set forth in the AML.

In accordance with the AML, each county should have a weights and measures inspection function (department). County departments are responsible for inspecting and testing weighing and measuring devices used commercially to ensure the devices accurately weigh or dispense commodities in correct amounts, as well as testing packaged commodities to verify the accuracy of vendor pricing. The AML also gives the county department's director (director) the authority to inspect and test fuel octane ratings.

Although counties are permitted to pass their own local laws relating to weights and measures, regulations developed in conjunction with the AML require county directors to inspect commercial weighing and measuring devices at least annually.¹ The AML also requires a director to submit an Annual Report of work completed each year to the Bureau. In addition, certain records are to be maintained by the director, including:

- A complete record of any establishments that utilize commercial weighing and measuring devices in their jurisdiction (by type of device),
- A file composed of devices inspected, and
- A complete record of all complaints received, and results of complaints investigated by the department.

How Should Departments Help Ensure Consumers Are Protected?

Department directors should implement procedures to provide reasonable assurance that the county is adequately protecting consumers by conducting all required device inspections. These procedures should include:

- Annually reviewing a master list of businesses located within the county and updating the inventory of all scanning, weighing and measuring devices used at each business that are required to be annually inspected,
- The periodic testing of gasoline and diesel fuel octane ratings,
- Evaluations of businesses' progress remedying any noted deficiencies, and, if appropriate, any enforcement actions, and

¹ New York Codes of Rules and Regulations (NYCRR) Section 220.5

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- Recording all consumer complaints received, as well as the results of the complaints that were investigated.

Departments may also elect to develop processes for retesting devices that failed inspection, and testing new or replacement devices installed by businesses.

Additionally, county directors are authorized by the AML to perform retail price accuracy testing at any retail business within the county to help ensure retail stores are accurately pricing goods. If price accuracy testing is conducted, the AML specifies that 98 percent of items in a selected sample should be accurately priced. Directors may impose civil penalties when testing does not meet the standard specified in the AML.

Testing Was Not Always Completed and Inventory and Inspection Records Were Not Complete

The Director did not test all required devices or implement a system to maintain a complete and accurate master list of businesses or the inventory of devices required for inspection.

Inspections – We reviewed inspection documentation and performed site visits at 30 establishments and identified 127 commercial weighing and measuring devices that were required to be tested during the audit period, including:

- Computing and platform scales,
- Vehicle scales,
- Linear measuring devices,²
- Petroleum pumps, and
- Timing devices.³

The Director did not test or have documentation for 13 of the 127 devices we identified that required testing, including:

- One platform scale,
- Eleven computing scales, and
- One timing device.

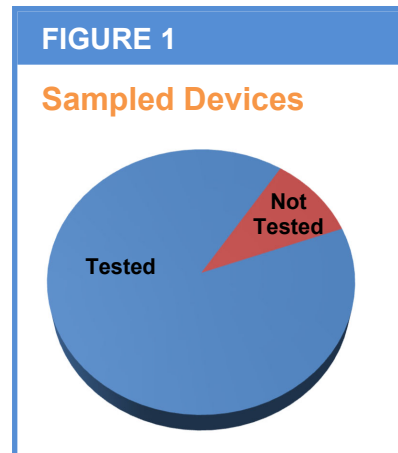
² Linear measuring devices are those that involve a single dimension in a straight line (e.g., the length of rope or wire in a hardware or home improvement store).

³ A timing device involves a transaction in which the consumer purchases a predefined amount of time (e.g., a dryer in a laundromat).

Although the other 114 devices were tested, these 13 untested devices represented 10 percent of all required device inspections in our sample (Figure 1).

The Director told us:

- The platform scale is a large device in use for a short period of time at a seasonal business and was already placed in storage when he made an unannounced inspection visit to the business. An employee on site was unable to access the scale for inspection.
- The 11 computing scales and one timing device were not inspected because the equipment was newly installed at the respective three businesses after the last annual inspection by the Department in 2023. Employees at the businesses told us they were not aware they needed to contact the Department to obtain an inspection prior to using the newly installed devices.



According to regulations developed in conjunction with the AML, the untested device should have been tested annually.

During the audit period, the Director also collected 286 samples from retail fuel pumps to ensure fuel octane rating were accurate. We reviewed 18 samples and determined the octane rating was at least equal to the amount reported on the pump for all 18 tests. The Department received approximately \$12,200 for fuel octane testing during the audit period because the County participates in a grant program administered by the Bureau that allows the Director to submit for reimbursement for the cost of the fuel tests.

Inventory List – The Director did not have a reliable process to help ensure the master list of businesses with weighing and measuring devices is complete and accurate. He does not work with other County departments to find out when new businesses have opened to update the master list. Instead, the Director and Assistant Director add businesses they find when driving to locations to conduct testing to the master list.

The Director did not maintain a complete list of businesses subject to weights and measures testing. Two of the five businesses we visited that used timing devices, one laundromat and one car wash, were not included on the Department's master list of 407 businesses.

The Director told us that the Department does not test the timing devices at self-serve car washes and laundromats because the testing is overly time-consuming. Also, he explained that these establishments typically do not have an attendant on-site to provide a receipt to be reimbursed for the cost of testing. However, according to regulations developed in conjunction with the AML, these timing devices should have been tested annually.

Complaints – The public can submit a complaint by contacting the Department at either the phone number or email address listed on the County’s website. The Director told us if there is a complaint concerning a safety issue (e.g., a leaking gas line), or alleged fraud, he investigates immediately. Otherwise, complaints are typically investigated the next business day. The Department documents each complaint on an investigation form showing the details of the complaint, the location, date, time and resolution.

The Director received four complaints during our audit period. The Director retained documentation for all four complaints investigated and they were resolved within the next business day.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. The Department periodically performed price accuracy testing on scanner systems for proper operation to check prices were properly entered and maintained.

The Director told us that he attempts to visit all discount variety stores (i.e., “dollar” stores), along with other retailers in their immediate vicinity, such as pharmacy, supermarket, and/or hardware stores, each year. He also told us that if a business does not meet the 98 percent accuracy standard for the selected sample, he allows a reinspection at a later date (typically within one to three months). When a business fails a reinspection, the Department imposes a penalty.

During the audit period, the Director performed 113 price accuracy tests. We reviewed the Director’s detailed inspection sheets, which showed that eight businesses failed the reinspection and were assessed a penalty (totaling \$13,000) based on how far the business deviated from the accuracy standard. The County collected a total of \$9,300 for seven penalties assessed in 2022. The remaining fine of \$3,600 was assessed in March 2023 but had not been received by the culmination of our field work.

Consumers are at risk of paying more than necessary for purchases when all weighing and measuring devices are not inspected annually to help ensure these devices are in working order or when complete records are not maintained.

What Do We Recommend?

The Director should:

1. Work with other County departments to ensure the master list of businesses is complete and accurate.
2. Perform weights and measures testing to help ensure all weighing and measuring devices are tested in accordance with regulations set forth by the New York State Department of Agriculture and Markets.
3. Maintain a complete master list of businesses and up-to-date inventory of devices used for pricing accuracy, weighing, and measuring.

Appendix A: Response From County Officials



JEFFERSON / LEWIS COUNTY
DEPARTMENT OF CONSUMER AFFAIRS
Bureau of Weights and Measures
21915 County Route 190
Watertown NY 13601

Phone: 315-786-1094

BRIAN M. MOONEY – Director
SARAH A. YOUNT – Assistant Director



Consumer Protection:
Accuracy of Weights and Measures:
S9-24-3

Thank you for giving us the opportunity to help improve the operations of our department.

Audit Recommendation:

Maintain a complete inventory of all businesses.

Implementation Plan of Action:

The Weights and Measures department will reach out to other Departments, such as the county clerk's office to build our existing list of businesses, either monthly or quarterly. Then go through the list provided by them to see if any of the new businesses currently have, or will have in the near future any commercial devices that fall under the jurisdiction of the Weights and Measures department, and are in need of certification and inspection.

Audit Recommendation:

Perform required testing in accordance with New York State Department of Agriculture and Markets regulations and AML.

Implementation Plan of Action:

Continue to the best of our two person department's ability to inspect of all 3,248 current devices (2,584 Jefferson, and 664 Lewis) over two counties, prioritizing mandated devices. This number does not include all the farm milk tanks that are inspected and/or rechecked for accuracy, nor does it include retests for repaired or recalibrated devices that have already been inspected for the current year, or all the pricing inspections done every year. Collecting fuel samples for testing, as well as checking packages for correct weights, so consumers are receiving what is advertised to them is also a priority for our department. Timing devices statistically have such a low failure rate that it was a lower priority than devices such as gas pumps and scales, which could have a larger impact on consumers and businesses.

Implementation Date:

Our department will start implementing these changes in the upcoming months, so that it will become department protocol for the start of the 2025 year.

Person Responsible for Implementation:

The Director of Weights & Measures

Signed:

Brian M. Mooney
Director of Weights & Measures

7-9-2024

Date

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We selected the County from a list of all counties (excluding NYC counties) and not currently in the Office of the State Comptroller's audit process at the time of selection. We stratified counties into three bands based on sales tax revenue reported in the 2021 fiscal year and judgmentally selected counties from these bands. Our selection considered geographic region for an even representation of counties across the State for this multi-unit audit.
- We interviewed County staff to gain an understanding of the County's Weights and Measures program.
- We reviewed the Department's master list of businesses and the County's 2022 annual report to the Bureau to determine whether the Department's reported information was reasonable.
- We selected five businesses located within County limits and attempted to trace these to the Department's master list and selected five businesses from the master list and visited these locations to determine whether the master list was accurate and complete.
- We selected 30 out of 407 businesses recorded on the Department master list to determine whether required devices were annually inspected. Using a representative sample based on the business categories listed in the County's 2022 annual report, we selected a random sample, using a random number generator, from the different categories reported, omitting categories for medical privacy concerns. We limited our testing to the three Towns of Watertown, Alexandria Bay, and Clayton because these towns represent just over half of all business recorded in the Department master list. We reviewed inspection records and physically observed devices at businesses.
- Using a non-biased judgmental sample, we selected 18 out of 286 fuel octane tests recorded on petroleum product sampling reports and compared them to third-party lab reports to determine whether tests conformed with standards. We also reviewed County reimbursement forms to determine whether the Department submitted octane testing costs to the Bureau.
- We reviewed the 2022 annual report and all documentation for the results of price accuracy testing conducted within the County for the audit period.

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- We reviewed the 2022 annual report and all documentation for consumer complaints, if available to determine whether the Director resolved the complaints.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make the CAP available for public review in the County Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.ny.gov/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.ny.gov/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.ny.gov/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.ny.gov/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.ny.gov/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.ny.gov/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.ny.gov/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.ny.gov/local-government/academy

Contact

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<https://www.osc.ny.gov/local-government>

Local Government and School Accountability Help Line: (866) 321-8503

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