



Madison County

Consumer Protection:
Accuracy of Weights and Measures

S9-24-8 | September 2024

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Report Highlights

Madison County

Audit Objective

Determine whether the Madison 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 or inventory 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:

- Forty-two of 126 devices that we reviewed were not inspected as required.
- There was no reliable system in place to maintain a complete and accurate master list of businesses with weighing and measuring devices that require inspection.

In addition, the Director did not develop and implement procedures for periodic price accuracy testing.

Key Recommendations

- Perform required testing in accordance with New York State Department of Agriculture and Markets regulations and AML.
- Develop and implement procedures for periodic price accuracy testing.

County officials disagreed with certain aspects of our findings and recommendations, but indicated they have initiated corrective action. Appendix B includes our comments on issues raised in the County's response letter.

Audit Period

January 1, 2022 - September 30, 2023

Background

The County, located in the Central region, is governed by an elected 19-member Board of Supervisors (Board).

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

The Director is responsible for the day-to-day operations of the Department, including determining and ensuring accuracy of measuring and weighing devices throughout the County.

Quick Facts

County Population	68,016
Number of Devices ^a	1,547
Businesses on Department Master List ^b	159

Department Budget

Revenues	\$11,322
Expenditures	\$108,565

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

-
- 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, monitor the system used to maintain a complete and accurate master list of businesses or update the inventory of devices required for inspection.

Inspections – We reviewed inspection documentation and performed site visits at 20 establishments and identified 126 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 42 of the 126 devices we identified that required testing, including:

- One weighing device, and
- 41 timing devices.

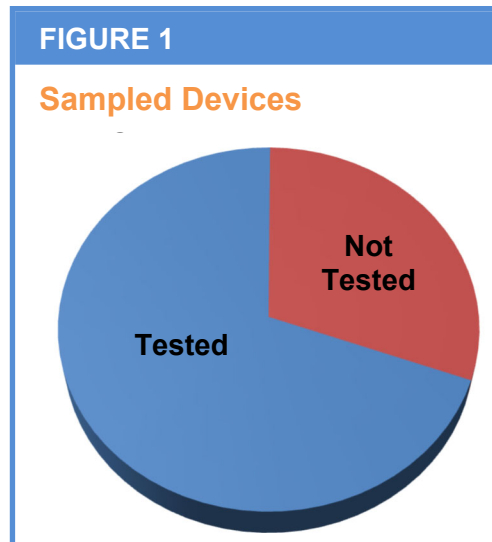
² Linear measuring devices are those that involve a single dimension in a straight line (e.g., the length of rope or wire in a hardware or home improvement store).

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 84 devices were tested, these 42 untested devices represent 33 percent of all required device inspections in our sample (Figure 1).

The Director told us:

- The Department did not test timing devices because it was not a priority. Instead, he told us he verifies whether businesses have adequate signs that inform consumers of the price for a specific allotment of time.
- The one weighing device was not tested because the Director overlooked the item during his inspection of that business.



According to regulations developed in conjunction with the AML, each of the untested devices should have been tested annually. Further, when the Director does not adequately enforce New York State Department of Agriculture and Markets regulations and AML by testing all required devices, consumers may not be receiving goods or services that they have paid for.

During the audit period, the Director also collected 96 samples from retail fuel pumps to ensure fuel octane ratings were accurate. We reviewed 11 samples and determined the octane rating was at least equal to the amount reported on the pump for all 11 tests. The Department received \$5,396 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 fuel octane tests.

Inventory List – The Director did not have a reliable process to help ensure the master list of businesses with weighing and measuring devices was complete and accurate. He does not work with other County departments to find out when new businesses have opened or closed. Instead, the Director told us he adds businesses to the master list when he is driving to locations to conduct testing, and removes businesses he finds have ceased operations when he visits them to conduct device tests.

Complaints – The Director recorded a total of four complaints during the audit period. The public can file a complaint with the Department via phone or email. The Director then investigates and documents the details of the complaint, location, date and resolution. We reviewed the documentation and determined the Department adequately resolved all four complaints.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. The Director told us the Department performed less than five price accuracy tests per year, because there is no policy or local law specifying when or how often to conduct such tests. The Director performed three price accuracy tests during our audit period, and indicated that two businesses met the 98 percent accuracy requirement while one failed then met the requirement upon a re-test. The Director did not conduct any other price accuracy inspections during the audit period.

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, complaints are not investigated and resolved 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 master list of businesses and up-to-date inventory of devices used for pricing accuracy and weighing and measuring.
4. Develop and implement procedures for periodic price accuracy testing.

Appendix A: Response From County Officials



MADISON COUNTY BOARD OF SUPERVISORS

JAMES J. CUNNINGHAM

Chairman

MARK SCIMONE

County Administrator

EMILY C. BURNS

Clerk

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Muni-Syracuse@osc.ny.gov

July 3, 2024

Office of the State Comptroller
Local Government and School Accountability
Syracuse Regional Office
State Office Building, Room 409,
333 East Washington Street, Syracuse, NY 13202-1428

Re: Madison County, Consumer Protection: Accuracy of Weights and Measures Response

To Whom It May Concern,

Please find Madison County's response to the multi-unit audit of our Weights and Measures Program based on the initial draft report and subsequent Madison County Edit Change document received via email from [REDACTED] dated 6/28/24. Thank you for the opportunity to respond.

Sincerely,

Mark Scimone
County Administrator

Enc.

Cc: Madison County Board of Supervisors
File - Weights and Measure Audit
Mark Miller, Director of Weights and Measures
Eric Faisst, Director of Public Health
Aaron Lazzara, Director of Environmental Health

Timing devices, Page 5

During the interview process, Director Mark Miller of Madison County Weight and Measures (MCWM), acknowledged that at the time of audit, timing devices were a mandated device. Mr. Miller conveyed the fact that Madison County has traditionally done visual inspections on timing devices to ensure proper signage (money per unit of runtime, contact information for refunds, and number of coins the device will accept and be activated at one time, per HB44, U.R.1 (a, b)) and based on training received from the prior MCWM Director. MCWM did not perform a physical test on timing devices. With limited staffing it was determined that our resources would be more effective in other critical areas.

Physical timing tests were not performed because of a number factors:

- NYS Ag and Markets (NYSDAM) has determined that this is an outdated mandate that was in place to regulate wind up timing devices that were frequently out of specified tolerances and could be easily manipulated. NYSDAM has determined that the current risk of modern devices becoming out of tolerance or tampered with extremely low and has been working to remove the mandate for a number of years. The mandate for timing devices was successfully removed from 1 NYCRR Part 220.5, in February of 2024. As such they were given the lowest priority of any mandated device.
- The overall number of devices ascribed to MCWM does not include timing devices (annual report, pg 4, row 44) because NYSDAM had made the determination that these devices were extremely low risk.
- 95% of these establishments are unattended by staff. In order to test each individual device money would need to be procured from the establishment. Logistically this makes it extremely difficult to perform the tests. It would not be equitable to only test the 5% of attended establishments.

Weighing device, Page 5

██████████ emailed Mr. Miller about a weighing device ██████████ found that had not been tested at a garden center (see attached email).

- Although the device in question was on site, it was not put into service by the establishment until February of 2024. They intended that the scale be used when the garden center was reopened for the spring season. The annual inspection for this establishment is March. There were several discussions between the examiners and Mr. Miller about the timing of the placement of the device. Prior year inspections performed by Mr. Miller and former MCWM Director Marc O’Hara, had not revealed this device was in use at that time. After receipt of ██████████ email Mr. Miller determined that the scale was a non-type approved device that would not be tested under any circumstances. The scale was removed and replaced by the owner of the garden center with a type approved scale. The new scale has subsequently been tested and sealed.
- The device in question was brought into service in February, 2024. The audit period is January 1, 2022-September 30, 2023. We are requesting that the comments made with respect to this device in the report be removed.

See
Note 1
Page 9

See
Note 1
Page 9

Pricing Accuracy Inspections

Pricing Accuracy is a non-mandated function at this time and may be performed by municipal Directors at their discretion. NYSDAM Law (Article 16, section 197-b) grants the authority to County Directors of Weights and Measures to conduct pricing accuracy inspections. Discretion lies with each Director or county legislative body to determine how this non-mandated inspection is utilized.

See
Note 2
Page 9

Historically Madison County has treated pricing accuracy as a complaint driven process. If a consumer files a complaint regarding an issue with inaccurate pricing, our department will conduct a price verification audit of the establishment, determine if any corrective action is warranted, and track compliance requirements.

- Individual counties that wish prioritize this type of inspection will most often enact a local law to determine the frequency of pricing accuracy audits.

Policies for Pricing Accuracy Testing

NYS Ag and Markets adopts the National Institute of Standards and Technology (NIST) Handbook (HB) 130, (V) Examination Procedures for Price Verification.

- Madison County’s Weights and Measures Department utilizes these policies and procedures to guide our pricing accuracy program. Specifically, our department utilizes HB 130, Section 2.8- Inspection Frequency, subsection (d)-Special Inspections, to determine our pricing accuracy inspection frequency of establishments within our jurisdiction.

See
Note 2
Page 9

Inventory Records Database

NYS Weights and Measures Law Article 16, Section 182-Notification and use of weighing and measuring devices, requires any establishment that is utilizing a weighing or measuring device to determine the weight, quantity or price of any commodity intended for sale to notify the municipal director of weights and measures prior to use. This law is the primary driver in maintaining an accurate account of devices and establishments.

- Maintaining a 100% accurate database at any given time is a near impossible task. In order to assist in this function we are currently looking into other agencies within Madison County that could provide access to a database of businesses or D/B/A’s. This could provide a more efficient means of identifying businesses that potentially utilize regulated devices.
- We are currently reviewing proprietary software for facility and device tracking as well as looking to adapt the Environmental Health Permit System used in another program area for these functions.

Appendix B: OSC Comments on the County's Response

Note 1

The Director was unable to provide any support that the weighing device was put into service in February 2024. During our inspection on February 26, 2024, we confirmed with the business that the device had been in use for customers throughout our audit period.

Note 2

Although the AML and regulations do not specify the frequency of price accuracy testing, the AML requires counties to adopt and implement price accuracy provisions (provisions) in accordance with those specified in the AML, and any subsequent regulations, when a preexisting local price accuracy law or regulation is not in effect. These provisions include testing procedures for pricing accuracy consistent with the 2006 edition of the *National Institute of Standards and Technology Handbook* (NIST Handbook).⁴ The NIST Handbook does suggest having routine inspections to help ensure stores maintain price accuracy.⁵

4 NYCRR Section 220.14

5 *National Institute of Standards and Technology Handbook 130* (2006) "Examination Procedure for Price Verification" <https://www.nist.gov/system/files/documents/2017/05/09/hb-130-06-final-pdf.pdf>

Appendix C: 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 six businesses located within County limits and attempted to trace these to the Department's master list and selected six businesses from the master list and visited these locations to determine whether the master list was accurate and complete.
- We selected 20 out of 159 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 judgmental sample from the different categories reported, omitting categories of a seasonal nature, non-commercial establishments, or for medical privacy concerns. We reviewed inspection records and physically observed devices at businesses.
- Using a non-biased judgmental sample, we selected 11 out of 96 fuel octane tests recorded on petroleum product sampling reports and compared 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.
- 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 D: 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

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

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