

Nassau County

Consumer Protection:
Accuracy of Weights and Measures

S9-24-9 | September 2024

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Report Highlights

Nassau County

Audit Objective

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

Key Findings

The Assistant Director of Weights and Measures (Assistant Director) did not complete all required testing of weighing and measuring devices or maintain complete inspection 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). In addition, although the Division had a price accuracy testing policy, the Assistant Director did not conduct any price accuracy tests. As a result, consumers are at increased risk of paying more than necessary for goods and services.

Specifically:

- 118 of 395 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 or update the inventory of devices.

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 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 Long Island region, is governed by an elected 19-member Legislature (Legislature).

The elected County Executive is responsible for the overall administration of County government.

Although the County Commissioner of Consumer Affairs is considered the Director of the Division, the Assistant Director is responsible for the day-to-day operations, including supervising four full-time inspectors.

Quick Facts

County Population	1,395,774
Number of Devices ^a	11,338
Businesses on Division Master List ^b	2,885
Division Budget	
Revenues	\$1,920,000
Expenditures	\$450,917

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

b) As provided by the Division

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 Assistant Director did not test all required devices or implement a system to maintain a complete and accurate master list of businesses.

Inspections – We reviewed inspection documentation and performed site visits at 50 establishments and identified 395 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 Assistant Director did not test or have documentation for 118 of the 395 devices we identified that required testing, including:

- 112 timing devices,
- Three linear measuring devices,
- Two weighing devices, and
- One vehicle scale.

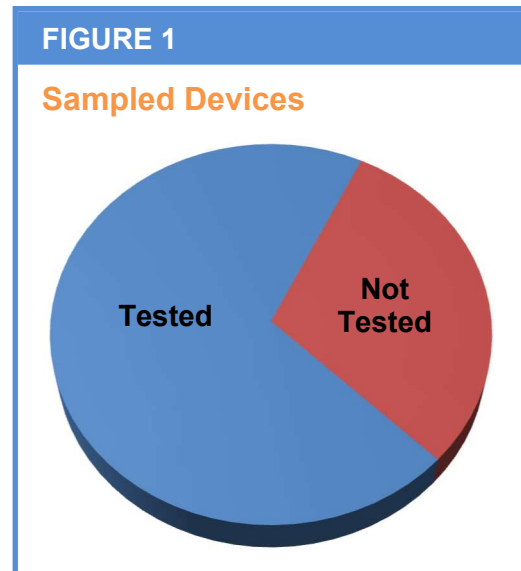
2 Linear measuring devices are those that involve a single dimension in a straight line (e.g., the length of rope or wire in a hardware or home improvement store).

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 277 devices were tested, these 118 untested devices represent 30 percent of all required device inspections in our sample (Figure 1).

The Assistant Director told us:

- He generally does not test timing devices because he does not have sufficient staff to conduct such inspections.
- Inspectors overlooked the three linear measuring devices during an inspection.
- Inspectors were unaware of the two weighing devices because the two businesses replaced their previously tested scales and failed to inform the Division.
- The Division was unaware the business was using the vehicle scale because, at the time of inspection, it was not in use.



According to regulations developed in conjunction with the AML, each of the untested devices should have been tested annually. Further, when weights and measures inspectors do 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 Assistant Director collected 1,909 samples from retail fuel pumps to ensure fuel octane ratings were accurate. We reviewed 20 of these samples and determined the octane rating was at least equal to the amount reported on the pump for all 20. The Division received approximately \$71,200 for fuel octane testing during the audit period because the County participates in a grant program administered by the Bureau that allows the Assistant Director to submit for reimbursement for the cost of the fuel tests.

Inventory List – The Assistant 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 to update the master list. The Assistant Director told us he primarily updates the master list when:

- Businesses call the Division to notify him that the business opened and has scales/measuring devices that need to be tested, or that the business is closing.
- Field inspectors note businesses that have opened or closed when conducting field inspections.

The Assistant Director did not maintain a complete list of businesses subject to weights and measures testing. For example, because the Assistant Director generally did not test timing devices, the master list did not include all businesses with only timing devices, such as tanning salons.

Complaints – The public can submit a complaint to the Division by phone, email or using the complaint form available on the Division’s website. Within one to two days of receiving the complaint, the Assistant Director assigns the complaint to a field inspector for immediate investigation. The Assistant Director recorded a total of 49 complaints during the audit period. We selected a sample of 10 complaints and determined the Division resolved all 10.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. The Division’s Item Pricing Waiver Inspections Policy (Pricing Policy):

- States inspections should be completed at businesses to ensure that the price on the shelf sticker and the price being charged at the register when the item is scanned are accurate.
- Specifies that a business may apply for an item pricing waiver but must pass two price accuracy inspections in the year the business applies.

However, the Pricing Policy also states that when staffing is not adequate, item pricing waiver inspections are considered a low priority and Division personnel will address higher-priority issues such as complaints. Further, the Pricing Policy does not specify when or how often to conduct price accuracy tests.

The Assistant Director told us he did not perform any pricing waiver inspections or price accuracy tests because he did not have adequate staff to conduct the inspections or testing.

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 Assistant Director should:

1. Work with other County departments to develop a system to notify the Division when a new business opens.
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. Conduct price accuracy testing in accordance with Division policy as workload and staffing levels permit.

Appendix A: Response From County Officials

BRUCE A. BLAKEMAN
COUNTY EXECUTIVE



JOHN R. CAPECE
COMMISSIONER

DEPARTMENT OF CONSUMER AFFAIRS

June 26, 2024

Office of the New York State Comptroller
Division of Local Government and School Accountability
PSU-CAP Submission
110 State Street, 12th Floor
Albany, NY 12236
Attn: Thomas DiNapoli, Comptroller

Re: Report of Examination of the
Nassau County Department of
Consumer Affairs Weights & Measures
Division Audit.

Dear Comptroller DiNapoli:

Please allow the following to serve as a response to the recent Report of Examination, S9-24-9, pertaining to the audit of the Weights & Measures Division of the Nassau County Department of Consumer Affairs for the period of January 1st, 2022, to September 30th, 2023, and as a Corrective Action Plan. We found the Report of Examination for the most part, to be accurate and fair.

AUDIT RESPONSE

BACKGROUND

The Audit Report states that during the Audit Period of 1/1/22-9/30/23, there were four full-time Inspectors working for the Weights & Measures Division of the Nassau County Department of Consumer Affairs. Please note that one of the full-time senior level Inspectors retired in the first half of the Audit period. The second full-time senior level Inspector was conducting on-the-job training of two Inspector Trainees during the Audit period, which significantly albeit temporarily, reduced her efficiency and effectiveness in completing her regular inspection duties.

KEY FINDINGS

Number of Devices not inspected:

Timing Devices: 112 of the 118 devices that were not inspected were timing devices. As mentioned in the Nassau Audit Report, the failure to inspect these devices, is a statewide issue and the mandate to inspect these devices no longer exists. However, the Nassau County Weights & Measures Division will continue to address any found inaccuracies with these devices, as well as any irregularities reported to us through consumer complaints.

Vehicle Scale Inspections: New York State Inspectors perform vehicle scale inspections. Nassau County does not possess the equipment necessary to perform these inspections.

See
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Maintain Complete Inspection Records: Nassau County Weights & Measures Division policy in effect during the Audit period, requires that a report be generated following any visit to a business and inspection of devices or scales. The reports are stored in the Weights and Measures office for ten years. Currently, we are working to migrate all existing inspection records within the department to the [REDACTED] database.

Unknown Linear devices: The auditors discovered two additional linear devices and they will be added to our list of premises to be inspected. Considered to be a low-risk priority, we previously were aware of only one location where these devices existed during the audit scope.

Price Accuracy Inspections: Although the Nassau County Weights & Measures Division did not perform any price accuracy inspections during the Audit period, the Consumer Protection Division of the Nassau County Department of Consumer Affairs, did perform price accuracy inspections during the Audit period pursuant to the Nassau County Law, on Item Pricing and Pricing Accuracy. (See Section 21-18.0 of the Nassau County Administrative Code.)

See
Note 2
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CORRECTIVE ACTION PLAN

1. *Work with other County departments to develop a system to notify the Weights & Measures Division when a new business opens.* The Weights & Measures Division will reach out regularly to the County Clerk, the Department of Health, and the Fire Marshal's Office, to compare databases for new businesses, and update as necessary. By networking with other County departments we will be made aware of previously unknown devices. Inspectors will also be vigilant about discovering additional devices and scales during their regular inspections. The new information will be added to our Weights & Measures' database. This policy will be effective July 1st, 2024.

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.* Nassau County Weights & Measures Division will continue to perform regular testing of all weighing and measuring devices guided by a Quality Manual, and in accordance with the regulations set forth by the New York State Department of Agriculture and Markets. Weights and Measures Inspectors will continue to attend bi-annual training to maintain expertise in their required duties. This policy is currently in effect.

3. *Conduct price accuracy testing and scanner accuracy testing in accordance with Weights & Measures Division policy as workload staffing levels permit.* The Weights & Measures Division will initiate scanner accuracy testing on a survey basis to gain existing level of accuracy and identify problem areas. Additionally, to respond and test any scales where a complaint was made, we will endeavor to hire additional staff in the next twelve months to increase the capacity of the Division to perform all necessary testing. The Weights & Measures Division will resume price accuracy testing once new hires are onboarded and trained. We anticipate that the hiring will be done within a year.

Nassau County is always available to partner with New York State in the furtherance of protecting New York State constituents from inaccuracies in the weighing and measuring of consumer products, which can negatively impact the consumer. We are grateful for the Auditor's findings and recommendations and will supplement our Policy & Procedures Manual and Weights & Measures Beginner Training Manual with this valuable information.

Very truly yours,

 John R. Capece
Commissioner

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516-571-6005

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Appendix B: OSC Comments on the County's Response

Note 1

According to NYCRR 220.5 (a), county directors must inspect and test for accuracy all commercially used weights and weighing devices and accessories at least once a year.

Note 2

County officials told us no price accuracy testing was completed during the audit period. Further, the County's Consumer Affairs personnel confirmed that no item pricing waiver inspections were performed during the audit period.

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 and reviewed local laws and policies to gain an understanding of the County's Weights and Measures program.
- We reviewed the Division's master list of businesses and the County's 2022 annual report to the Bureau to determine whether the Division's reported information was reasonable.
- We selected 10 businesses located within County limits and attempted to trace these to the Division's master list and selected 10 businesses from the master list and visited these locations to determine whether the master list was accurate and complete.
- We selected 50 out of 2,885 businesses recorded on the Division 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 or for medical privacy concerns. We reviewed inspection records and physically observed devices at businesses.
- Using a non-biased judgmental sample, we selected 20 out of 1,909 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 Division submitted octane testing costs to the Bureau.
- We reviewed the 2022 annual report and all documentation for consumer complaints, if available to determine whether the Assistant 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

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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