



Niagara County

Consumer Protection:
Accuracy of Weights and Measures

S9-24-6 | September 2024

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Report Highlights

Niagara County

Audit Objective

Determine whether the Niagara 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 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:

- Thirty-nine of 185 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.
- The Director could not support that he resolved six of the 14 complaints we reviewed.

Key Recommendations

- Perform required testing in accordance with New York State Department of Agriculture and Markets regulations and AML.
- Maintain complete records, including an inventory of businesses and consumer complaints.

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 Western region, is governed by an elected 15-member Board of Legislators (Legislature).

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

The Director is responsible for the day-to-day operations of the Department.

Quick Facts

County Population	213,000
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Number of Devices ^a	3,051
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Businesses on Department Business Lists ^b	420
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Department Budget

Revenues	\$47,000
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Expenditures	\$239,000
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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 each 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, Inspection and Investigation Records Were Not Complete

The Director did not test all required devices, implement a system to maintain a complete and accurate master list of businesses or update the inventory of devices required for inspection. Additionally, the Director did not maintain complete records of all complaints or the results of any subsequent investigations.

Inspections – We reviewed inspection documentation and performed site visits and/or reviewed third party documentation for 30 establishments and identified 185 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 39 of the 185 devices we identified that required testing, including:

- 35 timing devices,
- One weighing device.
- Three linear measuring devices, and

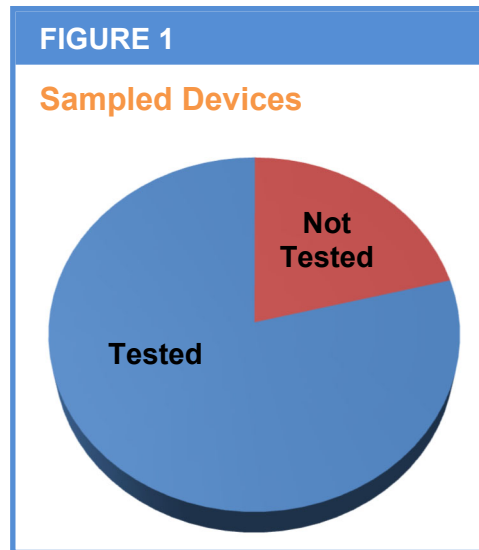
² Linear measuring devices are those that involve a single dimension in a straight line (e.g., the length of rope or wire in a hardware or home improvement store).

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 146 devices were tested, these 39 untested devices represent 21 percent of all required device inspections in our sample (Figure 1).

The Director told us he:

- Did not know he was required to test timing devices such as those used for laundromat clothes dryers or gas station air pumps.
- Was unaware of the linear measuring devices we identified.
- Thought the scale was not in commercial use at the store but agreed it should be tested annually if it were.



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

During the audit period, the Director also collected 288 samples from retail fuel pumps to ensure fuel octane ratings were accurate. We reviewed all 22 samples for eight selected businesses and determined the octane rating was at least equal to the amount reported on the pump for all 22 samples. The Department received approximately \$7,000 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 fuel tests.

Inventory List – The Director did not have a reliable process to help ensure the master business list with weighing and measuring devices was complete and accurate. The Director 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 and devices to his list when:

- He or Department inspectors conduct their duties,
- He notices new businesses during other field visits, or
- Business owners inform the Department that a new business that may have weighing or measuring devices opens within the County.

The Director did not maintain a complete list of businesses subject to weights and measures testing. For example, because the Director did not know testing timing

devices was required, businesses with only timing devices, including one of the 12 businesses we visited, a laundromat, were not included on the Department's master list.

Complaints – We identified 18 complaints received during our audit period. We selected a sample of 14 complaints and determined that eight were resolved. The Director could not support he resolved the remaining six. The Director told us he does not keep documentation when:

- He calls a complainant back and does not get an answer,
- The complaint is withdrawn, or
- The complaint is out of his jurisdiction.

However, according to the AML all complaints should be documented. During our fieldwork the Director told us the Department inspectors would begin documenting all complaints that they handle.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately.

The Director performed 285 price accuracy tests during the audit period. We reviewed the results for five price accuracy tests; four met the 98 percent accuracy standard. For the one business that failed the inspection, the Director reinspected the store one month later and the errors were corrected.

The Director told us he attempts to test all businesses within the County each year because it is important to ensure customers are not being overcharged.

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 complete records, including:

- A master list of businesses and up-to-date inventory of devices used for pricing accuracy, weighing and measuring, and
- A complete log of all consumer complaints with the results of any investigations.

Appendix A: Response From County Officials



July 8, 2024

New York State Comptroller
Statewide Audit Unit

Dear Sir or Madam:

Enclosed please find the Response from the Niagara County Weights and Measures Department relative to Report of Examination S9-24-6, Consumer Protection: Accuracy of Weights and Measures.

Thank you for your consideration.

Sincerely,

Richard Updegrove
Niagara County Manager



Niagara County Department of Weights and Measures
Audit Report Title: Niagara County Consumer Protection: Accuracy of Weights and Measures
Audit Report Number: S9-24-6

Inspections

Audit Recommendation:

- 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

35 Timing Devices

Implementation Plan of Action(s):

- As of 2/28/2024 Ag and Markets removed the regulation to annually inspect timing devices
- Although the Department has never received a complaint about a timing device in recent history, if there is a complaint in the future we will investigate the matter.

Implementation Date:

- February 28th 2024

Person Responsible for Implementation:

- Director of Weights and Measure Patrick Kenney

3 Linear Measuring Devices

Implementation Plan of Action(s):

- The Linear Devices are not in use by the store. They use counting devices that are inspected by the department that are up to date on inspections. The department will visit the locations and confirm that the linear devices are still not in use and have the store remove them from the floor or place a sign stating they are for estimating purposes only.

See
Note 1
Page 11

Implementation Date:

- July 8th 2024

Person Responsible for Implementation:

- Director of Weights and Measure Patrick Kenney

1 Weighing Device

Implementation Plan of Action(s):

- The scale was marked Out Of Service in 2023. The department visited the location to find that the scale was still Out of Service and was not at the store. The business was in the process of moving to their new location. The businesses has since opened their new location and the device that was previously marked Out of Service has been put back into service as of 6/26/24, was inspected by our department, and was correct to Maintenance Tolerance.

Implementation Date:

- June 26th 2024

Person Responsible for Implementation:

- Director of Weights and Measure Patrick Kenney

Inventory List

Audit Recommendation:

- Work with other County departments to ensure the master list of businesses is complete and accurate.
- Maintain complete records including: A master list of businesses and up-to-date inventory of devices used for pricing accuracy, weighing and measuring.

Disagreements

- The businesses that were missing from the Department's master business list were those that have timing devices. All other businesses with a device that are in need of annual inspection were accounted for along with businesses that the Department conducts Pricing and Commodity Audits at.
- The Department has 3 different forms of viewing the list of businesses with devices in the County. The Department has paper copies of all inspections completed in the correct files for the business in the file cabinet. A list of businesses with devices that require testing is kept on the walls of the office along with the last inspection completed at those locations separated into the correct device type (ex. Gas Stations, Truck Scales, Bakery Etc.). And an [REDACTED] document on the County computer that lists all businesses as well as the devices at each business with the last inspection completed. The Department also tracks Broken or Out of Service devices as well as closed businesses in the event that any of them return to service. Those devices and businesses are marked according to their current up to date condition. It was also noted at the time of the audit that the master list of businesses was more extensive than what the auditors had on file and were using during their audit.

See Note 2 Page 11

Implementation Plan of Action(s):

- Moving forward, the Department will continue to use the system in place to make sure all devices that are required to be inspected are completed annually.
- The Department will also work with other County departments and other jurisdictions to ensure a complete and up to date list of businesses is maintained and seek out any ways to improve our method of tracking and testing devices in our county.
- The Department/County have drafted a letter that will be sent to the State of New York, Bureau of Weights and Measures requesting any complete and accurate list of businesses and associated commercial weighing devices in Niagara County that NYS may have, be sent over to our department for us to cross check to ensure no devices or businesses are being missed. (Please see attached Letter)
- The Department will also be contacting Weights and Measures Departments from other Counties in NYS to find out practices they use to ensure the accuracy of their own inventory list.

Implementation Date:

- June 26th 2024 and onward

Person Responsible for Implementation:

- Director of Weights and Measure Patrick Kenney

Complaints

Audit Recommendation:

- Maintain complete records including: A complete log of all consumer complaints with the results of any investigation

See
Note 3
Page 11

Disagreements

- All incoming calls are logged by the Department regardless of their nature. If a complaint is called in, it is documented regardless of whether the Department can get further details or not from the caller, and if the caller does not return our call back.
- If a complaint is withdrawn it is documented. There have been instances where a caller retracts their complaint and that is noted and documented accordingly.
- The 6 instances referenced where there was no documentation other than the call log report were as follows:
 - 6-8-2022 – Caller asked about a [REDACTED] location in Niagara Falls. The caller made no reference to which location they were calling about or what the purpose of their call was. The Department returned the call upon receiving the message but received no answer and no call back.
Not clear that this was a complaint or a general question.
 - 6-14-2022 – Caller stated they were being double charged at [REDACTED]. Call was returned explaining the Department has no jurisdiction over the business.
This business is not in the County's jurisdiction.
 - 8-31-2022 - Caller asked for a call back. No name or other information about the call was given. The Department returned the call upon receiving the message but received no answer and no call back.
Not clear that this was a complaint, wrong number, general question ect.
 - 10-26-2022 – Caller stated they were overcharge at a location. The Department returned the call upon receiving the message to find out more information but received no answer and no call back. This should have been documented as a complaint including the location of the complaint as well as the date the call was received but was not. The complaint also should have noted that no other information was provided on the voicemail and that the return call made by the Department was not answered and no call back was received.
 - 10-27-2022 – Caller asked about selling fish eggs off a scale. The Department returned the call upon receiving the message and provided the caller with possible scales to purchase and told the caller to contact the Department again if they decided to sell using a scale. The caller called again on 11-1-2022 with a scale that needed inspection.
This was an inquiry for information and not a complaint.
 - 3-30-2023 – Caller wanted to make a complaint about [REDACTED]. Call was returned explaining the Department has no jurisdiction over the business.
This business is not in the County's jurisdiction.

Implementation Plan of Action(s):

- The Department will continue to log all calls in the call log that is kept. All calls involving questions from consumers as well as all calls that are not clear complaints will be documented with further details on the call log from the caller. It will be noted what steps were taken to gather more information from the caller as well as any information given to the caller. In addition, all complaints that fall outside of the County's jurisdiction will be documented in the same manner.

Implementation Date:

- January 2nd 2024

Person Responsible for Implementation:

- Director of Weights and Measure Patrick Kenney

Appendix B: OSC Comments on the County's Response

Note 1

During our inspection on January 24, 2024, store personnel told us the linear devices were used to measure goods sold. Further, the Director told us he was not aware he had to measure linear devices.

Note 2

We used the lists provided by the Director during the audit. While the Director had multiple tracking methods to test businesses, the Director had not identified all devices required to be tested, such as linear devices and timing devices. Further, the Director stated his lists were not complete because he is unaware when new businesses open or close until they are identified during a field visit or complaint.

Note 3

The regulations require the Director to keep a complete record of complaints and the results of complaints investigated. The call log did not have sufficient documentation to determine what actions, if any, were taken by the Department. Further, the Director was unable to provide any other support for the complaints or for the assertions made in the County's response.

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 Department's 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 business list and selected seven businesses from the business list and visited these locations to determine whether the business list were accurate and complete.
- We selected 30 out of 420 businesses recorded on the Department business 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 eight out of 168 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 and call logs, 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

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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