



Orange County

Consumer Protection: Accuracy of Weights and Measures

S9-24-5 | September 2024

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Report Highlights

Orange County

Audit Objective

Determine whether the Orange 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, inventory 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:

- 165 of 446 devices that we reviewed were not inspected as required.
- The Director did not monitor or update the database the Department used to maintain the master list of businesses with weighing and measuring devices; the master list contained numerous errors and omissions and did not include businesses with only timing devices.
- Two of 19 consumer complaints did not include documentation to show the results of the Department's investigation.

In addition, the Director did not develop and implement procedures for periodic price accuracy testing; testing conducted by the Department did not meet AML standards.

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 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 Mid-Hudson region, is governed by an elected 21-member Board of Legislators (Legislature).

The appointed County Executive 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, including supervising four full-time inspectors.

Quick Facts

County Population	401,310
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Number of Devices ^a	6,682
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Businesses on Department Master List ^b	1,006
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Department Budget

Revenues	\$109,290
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Expenditures	\$1,058,468
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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 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 Inspection, Inventory and Investigation 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. 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 at 40 establishments and identified 446 commercial weighing and measuring devices that were required to be tested during the audit period, including:

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

The Director did not test or have documentation for 165 of the 446 devices we identified that required testing, including:

- 148 timing devices,
- Three linear measuring devices,
- Five gas/diesel petroleum pumps,
- Eight 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).

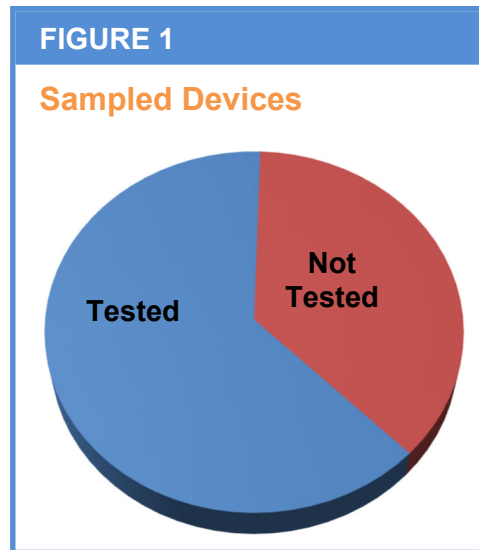
³ A timing device involves a transaction in which the consumer purchases a predefined amount of time (e.g., a dryer in a laundromat).

Although the other 281 devices were tested, these 165 untested devices represent 37 percent of all required device inspections in our sample (Figure 1).

The Director told us:

- The Department did not test timing devices because he was not aware he was required to do so.
- Inspectors were unaware two of the linear devices were in use at one business because the devices were added after a previous inspection and the Department was not notified. The third device was overlooked by inspectors during an inspection at a different business.
- The gas/diesel petroleum pumps did not have inspection seals because they failed the inspections. According to the inspection documentation, one pump was out of tolerance in favor of the business (i.e. dispensing less fuel than expected) and the other four pumps' displays were not readable. Inspectors issued a violation to stop using the out of tolerance pump until it was repaired, but no violations were issued for the other pumps because the displays did not impact the amount of fuel dispensed. During our fieldwork we observed all five pumps were in use; at the conclusion of our fieldwork inspectors had not retested any of the five pumps to ensure the issues were resolved.
- The eight weighing devices were not tested because inspectors overlooked them during their inspections of those businesses. One of these devices was last inspected in February of 2022 and has not been reinspected since.
- The Department conducted the initial vehicle scale inspection in 2013 but has neglected to reinspect it since that time.

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, or retest devices that failed initial inspections, consumers may not be receiving goods or services that they have paid for.



During the audit period, the Director also collected 504 samples from retail fuel pumps to ensure fuel octane ratings were accurate. We reviewed 15 samples and determined the octane rating was at least equal to the amount reported on the pump for all 15 tests. The Department received approximately \$16,800 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 did not work with other County departments to find out when new businesses have opened to update the master list. Instead, the Director or inspectors add businesses they find when driving to locations to conduct testing.

The Director did not maintain a complete list of businesses subject to weights and measures testing. Although the Department uses a computerized database to maintain a master list of businesses, the Director did not review the information in the database to ensure the information was complete and businesses are accurately categorized. As a result:

- The master list included 18 establishments categorized as “Unknown” or without any category assigned, such as a pharmacy and a bakery.
- The business list did not include any timing devices.
- One of the five businesses we visited, a car wash that only had timing devices, was not included on the list.

Complaints – The Director recorded a total of 58 complaints during the audit period. We reviewed documentation for a sample of 19 complaints and determined the Department resolved 17 of the 19 complaints in our sample.

We were unable to determine the results of two complaints because the Director did not retain documentation or record the results of his investigations related to these complaints. The Director told us, based on the complaint description, the consumer called back and told him the complaint was resolved before any investigation took place, but he did not keep a record of the phone call or document that the complaint was resolved. He did not know if inspectors investigated the second complaint as they did not retain any documentation. He also told us most complaints did not result in any violation; however, he did not review any results from the investigations for the complaints tested. Furthermore, according to the AML all complaints should be documented regardless of their investigative outcomes.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. The Director told us the Department only performed price accuracy testing if there was a complaint, and generally they only tested the items the consumer indicated were incorrect.

One price accuracy test was conducted during our audit period at a supermarket based on a consumer complaint. The inspector reported how many items were correct, overpriced or underpriced, but did not determine whether the store passed the test. Although we cannot attest to the reliability of the Department's inspection methodology, using the Department's inspection results, we calculated only 94 percent of the items tested were accurately priced; below the 98 percent standard specified by the AML. Therefore, the store failed the Department's inspection.

Although the Director told us he asked the inspector to do the test, he did not review the results. Further, he did not require the inspectors to perform a retest to ensure the business corrected the pricing errors or issue a violation and fine for the failed inspection. Without retesting, it is possible the business has continued to charge inaccurate prices to consumers.

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. In addition, as shown in the results of the price accuracy testing, inaccurate pricing of commodities has a direct impact on consumers.

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.
4. Develop and implement procedures for periodic price accuracy testing.

Appendix A: Response From County Officials



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Steven M. Neuhaus
County Executive
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July 2, 2024

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Subject: Response to New York State Comptroller's Report of Examination (S9-24-5)

Dear Ms. Thompson,

Please let this letter serve as Orange County's response to the preliminary draft findings for the New York State Comptroller's Report of Examination (S9-24-5). I am filing this response on behalf of Orange County Executive Steven M. Neuhaus, whose office has reviewed and concurs with this response.

I appreciate the time and effort put forth by you and your team evaluating the Orange County Department of Weights and Measures for the period from January 1, 2022 to September 30, 2023. Your staff was courteous and professional throughout the entire process. Orange County takes pride in accurate and precise delivery of services to the taxpayer. We value the report's comments and recommendations. Based on those recommendations, we have implemented the following procedures which will serve as the foundation of our Corrective Action Plan.

Comptroller's Recommendation Number One:

Work with other County departments to ensure the master list of businesses is complete and accurate.

Response:

In response to the Auditor's report, we have instituted three new processes for locating new businesses in Orange County that might have scales or other measuring devices. First, we have made a flyer to attach to the County Clerk new business welcome packet that informs any new business that they are required to contact us if they use a measuring device. Second, we have asked the Health Department to send us any businesses they inspect that might have weighing or measuring devices. Third, all weights and measures inspectors have been instructed to proactively look for new businesses that they feel might have scales or other weighing devices while traveling around the County.

Comptroller's Recommendation Number Two:

Perform weights and measures testing to help ensure weighing and measuring devices are tested in accordance with regulations set forth by the New York State Department of Agriculture and Markets.

Response:

The County has implemented weights and measures management software to better track businesses, devices, and inspections. Weights and Measures personnel will strive to ensure all testing and inspections are complete and accurate. Historically, timing devices such as laundry washing machines and dryers, car washes, commercial vacuum devices, etc., were not tested in Orange County. This accounted for 148 of the 165 devices found to be not tested. Although the Agricultural and Markets regulation requiring annual inspection of timing devices has now been removed as of February 28, 2024, we will institute a program of random testing for timing devices and maintain a more complete inventory of tested devices in Orange County.

Comptroller's Recommendation Number Three:

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.

Response:

In response to the Auditor's report, we now have two computer programs that we use for keeping current records on businesses, inspections, devices, and consumer complaints. Both programs will help maintain complete, accurate, and up-to-date records.

a) The master list of all businesses with an up-to-date list of devices and inspections is recorded using a computer program called [REDACTED]. This software allows the County to more accurately track devices, inspections, and the businesses they are associated with.

b) Our log of Weights & Measures complaints is now kept electronically on [REDACTED]. [REDACTED] Complaints are logged, investigated, and the results are entered into the program. Complaints can now be tracked from inception to final resolution.

Comptroller's Recommendation Number Four:

Develop and implement procedures for periodic price accuracy testing.

Response:

In response to the Auditor's report, we have developed procedures to have the weights and measures inspectors perform random price accuracy testing while they are in a store performing inspections on weighing and measuring devices. In addition to the spot checks, the inspectors will also perform complete formal price accuracy inspections in stores across the County on a monthly basis, as per the National Institute of Standards and Technology (NIST) Handbook.

In conclusion, we appreciate the opportunity to respond to the audit findings and will make every effort to incorporate them into the Corrective Action Plan. Orange County strives to be accountable to its constituents and is dedicated to continuous improvement.

Sincerely,

Timothy Flanagan
Interim Commissioner of Consumer Affairs

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 and reviewed local laws and policies 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 40 out of 1,006 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 15 out of 504 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 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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