



Tompkins County

Consumer Protection:
Accuracy of Weights and Measures

S9-24-7 | September 2024

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Report Highlights

Tompkins County

Audit Objective

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

Specifically:

- 1,265 of 1,904 devices (66 percent) were not inspected as required.
- There was no system in place to maintain a complete and accurate master list of businesses with weighing and measuring devices or update the inventory of devices.

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

Key Recommendations

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

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

Audit Period

January 1, 2022 – September 30, 2023. We extended our scope to December 31, 2023, to review testing completed by the current Director.

Background

The County, located in the Southern Tier region, is governed by an elected 14-member Board of Legislators (Legislature).

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

The Director of Weights and Measures (Director) is responsible for the day-to-day operations of the Department. The current Director began her position on September 4, 2023; the former Director separated from the County on March 31, 2023. During the five-month vacancy period between Directors, the Deputy served as the point of contact for the Department.

Quick Facts

County Population	105,740
Number of Devices ^a	1,904
Businesses on Department Master List ^a	175

Department Budget

Revenues	\$23,000
Expenditures	\$129,476

a) 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.

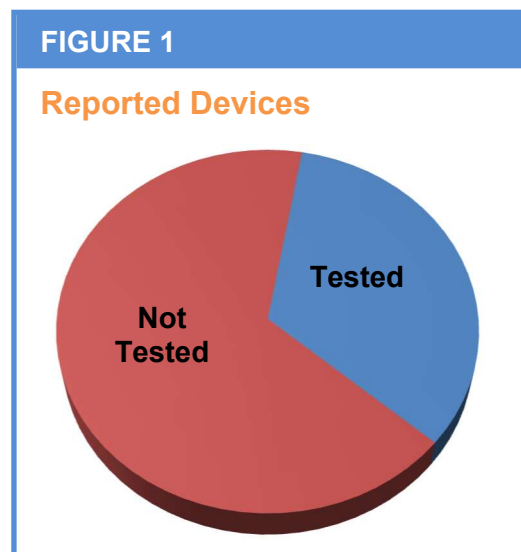
Testing Was Not Always Completed and Inventory and Inspection Records Were Not Complete

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

Inspections – During 2023, the Department did not perform inspections at 122 of the 175 establishments on the master list of businesses. As a result, 1,265 of the 1,904 devices required for inspection (66 percent) were not tested in 2023 (Figure 1).

The Deputy, who submitted the Department’s 2022 Annual Report to the Bureau, told us not all inspections were performed in 2023 because of the five-month vacancy period between Directors. The delay in hiring a new Director was due to the time needed to form a search committee, posting the position, and passing a local law which restructured the Department. However, regardless of the circumstances, according to regulations developed in conjunction with the AML, each of the untested devices should have been tested at least on a yearly basis.

We reviewed inspection documentation and performed site visits at 10 of 53 establishments that were inspected in 2023 and identified 58 commercial weighing and measuring devices that were required to be tested, including computing and platform scales and petroleum pumps. The Department tested all devices at these 10 establishments.



During the audit period, neither Director collected samples from retail fuel pumps to ensure fuel octane ratings were accurate. The current Director told us she plans to begin fuel octane ratings testing in 2025 once she has completed a full calendar year as Director and gains an understanding of the workload of the Department. The County does not participate in a grant program administered by the Bureau that allows the Department to submit for reimbursement for fuel octane tests.

Inventory List – The Department did not have a reliable process to help ensure the master list of businesses with weighing and measuring devices is complete and accurate. Although we were unable to determine the process of the former Director, including whether or not he worked with other County departments to find out when new businesses opened to update the master list, the master list inherited by the current Director did not include all businesses with weighing and measuring devices. The current Director added businesses to the master list when she:

- Drove to locations to conduct testing,
- Received calls from businesses prior to their opening, and
- Reviewed the County Clerk’s public-facing website to identify newly formed businesses or corporations and determined whether they had weights and measuring devices for inspection.

Three of the five businesses we visited with a scale or timing devices² were not included on the Department’s master list of businesses, including:

- One car wash and one laundromat, that contained only timing devices, and
- One deli with a weighing device.

The current Director told us the Department did not test the timing devices at self-serve car washes or laundromats because there is a proposed amendment to the regulations to eliminate the requirement to do so. However, as of the conclusion of our fieldwork we were not aware of any amendments removing this requirement. The remaining business was an oversight by the current director and the business should have been on the master list.

Complaints – The public can submit a complaint by contacting the Department at either the phone number or email address listed on the County’s website.

The former Director received two complaints during our audit period. We reviewed the documentation for the two complaints and determined the former Director resolved them within one to two business days. The complaints were documented

² A timing device involves a transaction in which the consumer purchases a predefined amount of time (e.g., a dryer in a laundromat).

on a complaint form showing the complainant's name, location, actual complaint, time and date, and resolution. The current Director told us she has not yet received a complaint.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. Neither Director conducted any price accuracy tests during the two-year audit period. The current Director told us that the Department does not perform price accuracy 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 Director should:

1. 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.
2. Maintain a complete master list of businesses and up-to-date inventory of devices used for pricing accuracy, weighing and measuring.
3. Develop and implement procedures for price accuracy testing.

Appendix A: Response From County Officials



*Inclusion Through
Diversity*

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"Promoting excellence in County operations while respecting the needs of the people we serve."

Office of the New York State Comptroller
110 State Street
Albany, NY 12236

June 28, 2024

To Whom It May Concern:

This is to confirm that we received the draft audit report of the Tompkins County's Weights and Measures Department on June 10, 2024. We agree with the findings of the report and have already implemented your recommendations, which we'll outline in a separate corrective action plan as required.

Sincerely,

Lisa Holmes
County Administrator

Inclusion Through Diversity

Appendix B: Audit Methodology and Standards

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

- We selected the County from a list of all counties (excluding NYC counties) and not currently in the Office of the State Comptroller's audit process at the time of selection. We stratified counties into three bands based on sales tax revenue reported in the 2021 fiscal year and judgmentally selected counties from these bands. Our selection considered geographic region for an even representation of counties across the State for this multi-unit audit.
- We interviewed County staff to gain an understanding of the County's Weights and Measures program.
- We reviewed the Department's master list of businesses and the County's 2022 annual report to the Bureau to determine whether the Department's reported information was reasonable.
- We selected four 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 10 out of 53 businesses inspected during 2023, as 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 for medical privacy concerns. We reviewed inspection records and physically observed devices at businesses.
- We reviewed 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 Board 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 Board 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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