



# Washington County

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Consumer Protection:  
Accuracy of Weights and Measures

**S9-24-4 | September 2024**

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# Report Highlights

## Washington County

### Audit Objective

Determine whether the Washington 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:

- Nine of 114 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 with weighing and measuring devices.
- The Department's master list of business did not include all businesses with timing devices.

In addition, the Director 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 complete records, including an 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

### Background

The County, located in the Capital region, is governed by an elected 17-member Board of Supervisors (Board).

The appointed County Administrator (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.

#### Quick Facts

County Population	61,000
Number of Devices <sup>a</sup>	753
Businesses on Department Master List <sup>b</sup>	160
<b>Department Budget</b>	
Revenues	\$2,500
Expenditures	\$94,000

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

b) As provided by the Department

# Accuracy of Weights and Measures

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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.<sup>1</sup> 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

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<sup>1</sup> 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 or implement a system 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 114 commercial weighing and measuring devices that were required to be tested during the audit period, including:

- Computing, pre-pack and platform scales,
- Vehicle scales,
- Linear measuring devices,<sup>2</sup>
- Petroleum pumps,
- Oil truck pumps, and
- Timing devices.<sup>3</sup>

The Director did not test nine of the 114 devices we identified that required testing, including:

- Four timing devices,
- Three oil truck pumps, and
- Two computing scales.

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<sup>2</sup> 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).

<sup>3</sup> 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 105 devices were tested, these nine untested devices represent eight percent of all required device inspections in our sample (Figure 1).

The Director told us:

- He does not test timing devices because he thought an amendment to the regulations had eliminated the requirement to do so. However, as of the conclusion of our fieldwork we were not aware of any amendments removing this requirement.
- The three oil truck pumps were not inspected in 2022, as required, due to his unexpected leave in December 2022 when their inspection was scheduled.
- The two computing scales were newly installed at the business but he was not informed to perform the required inspection.

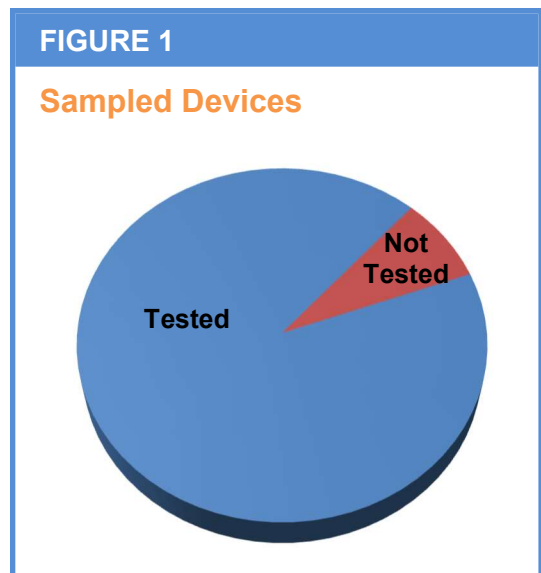
According to regulations developed in conjunction with the AML, each of the untested devices should have been tested annually.

During the audit period, the Director also collected 82 samples from retail fuel pumps to ensure fuel octane ratings were accurate. We reviewed all samples and determined the octane rating was at least equal to the amount reported on the pump for all tests. The Department received approximately \$4,100 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 list of businesses with weighing and measuring devices is 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 Director told us he adds businesses to the master list:

- That he finds when he is driving to conduct testing,
- When a vendor calls for an inspection prior to using devices (as instructed on the County's website), and
- From his review of local newspapers.

The Director did not maintain a complete list of businesses subject to weights and measures testing. Because the Director believed the requirement to test timing devices was eliminated, the master list did not include all businesses with timing devices, such as laundromats and tanning salons.



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Complaints – The Director reported zero complaints received during the audit period. The Director told us complaints can be received either by phone or email and are often passed on to him from the Bureau. When he receives a complaint, he will document the details of the call or keep the email and will attempt to resolve the complaint the same day or the next day. In addition, he will add notes to the business listing that a complaint was received and what the resolution was.

Price Accuracy Testing – Periodic price accuracy testing helps protect consumers by ensuring displayed prices are charged accurately. The Director did not conduct any price accuracy inspections during the audit period. He told us that he used to perform price accuracy testing, usually based on consumer complaints, however, he stopped doing accuracy testing in 2021 due to time constraints and has not resumed any price accuracy testing since.

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. 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 complete master list of businesses with an up-to-date inventory of their devices used for pricing accuracy, weighing and measuring.
4. Develop and implement procedures for price accuracy testing.

# Appendix A: Response From County Officials

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## WASHINGTON COUNTY BOARD OF SUPERVISORS

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383 Upper Broadway, Bldg. B.  
Fort Edward, New York 12828  
Tel. (518) 746-2210  
Fax (518) 746-2219\*  
\*Service by fax not accepted  
Email - [Supervisors@washingtoncountyny.gov](mailto:Supervisors@washingtoncountyny.gov)

July 9, 2024

Office of the State Comptroller  
Division of Local Government & School Accountability  
PSU – CAP Submission  
110 State Street, 12<sup>th</sup> Floor  
Albany, NY 12236

RE: Response Letter and Correction Action Plan  
Washington County Consumer Projection: Accuracy of Weights and Measures  
Report Number: S9-24-4

Please consider this letter as Washington County's response to the audit named above as well as our corrective action proposal for each recommendation included in the audit report.

### 1. Audit Recommendation

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

#### Implementation Plan of Action:

Although universal detection of new businesses is somewhat problematic in a rural county where roadside produce businesses appear, operate for a few weeks, and disappear, a somewhat more systematic approach may help. At present, such businesses are found either serendipitously as the Weights and Measures Director (WMD) travels to conduct testing or if the business, as required by law, contacts the WMD for an initial inspection. In addition to this we will now have the County Clerk report to the WMD whenever a new business is issued a DBA certificate so contact can be made directly to determine the need for inspection.

Implementation Date: 6/17/24

Person Responsible for Implementation: Lisa Boyce, Washington County Clerk



**2. Audit Recommendation:**

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

**Implementation Plan of Action:** The issues with this audit recommendation were three. The first related to not testing timing devices. Following an annual meeting where the state director recommended discontinuing this because the regulations were expected to change, the WMD stopped conducting these inspections (primarily laundromats in this area.) Inspections will now be done until such time as clarity on the requirement comes from the state. The second deficit related to not testing three oil truck pumps, which had not been done in at a time when the WMD was gone on unexpected leave. These trucks have been tested and will continue to be tested according the annual schedule. The third deficit involved two computing scales newly installed at businesses. The businesses had not contacted the WMD because the scales had been sealed by a Vermont inspector. The businesses have been contacted and the situation corrected. These scales would have been found when the business got its regularly scheduled inspection. Businesses will be advised again that they must contact the WMD whenever new equipment is placed in service.

**Implementation Date:** 6/17/24

**Person Responsible for Implementation:** Daniel Sullivan, WMD

**3. Audit Recommendation:**

Maintain a complete master list of businesses with an up-to-date inventory of their devices used for pricing accuracy, weighing and measuring.

**Implementation Plan of Action:** This finding relates fundamentally to Audit Recommendation 1. Putting a more comprehensive method of detecting new businesses in place with increase the accuracy and universality of the WMD's Master List of businesses, which is used to schedule inspections.

**Implementation Date:** 6/17/24

**Person Responsible for Implementation:** Daniel Sullivan, WMD, Lisa Boyce, County Clerk

**4. Audit Recommendation:**

Develop and implement procedures for price accuracy testing.

**Implementation Plan of Action:** It has been the understanding of Washington County that price accuracy testing was not mandatory for county departments, instead being primarily a state function. However, the Washington County WMD has resumed conducting these tests, typically in conjunction with the state specialist (currently [REDACTED])

**Implementation Date:** 6/17/24

**Person Responsible for Implementation:** Daniel Sullivan, WMD

**5. Washington County Response to Global (Statewide) Audit Report**

It was noted that the deficiencies found in Washington County were the same as discovered in all other counties audited and gratifying to see that our percentages were much lower than the mean in all cases. It is also salient that some categories that were a problem in some counties, e.g., handling and documentation of complaints, was not an issue here. The global audit process is very valuable insofar as it can point out where clearer communication of expectations can and will yield a more comprehensive and satisfactory result on the field level.

We appreciate the audit team's thoroughness and professionalism throughout this process. Please contact my office directly should any additional information be required at this time.

Sincerely,

Robert A. Fenkē, Chairman  
Washington County Board of Supervisors

## Appendix B: Audit Methodology and Standards

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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 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 20 out of 160 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 or for medical privacy concerns. We reviewed inspection records and physically observed devices at businesses.
- We selected all fuel octane tests recorded on petroleum product sampling reports and compared them 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 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.

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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

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### **Regional Office Directory**

[www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.osc.ny.gov/local-government/academy)

## Contact

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