



Wyoming County

Consumer Protection: Accuracy of Weights and Measures

S9-24-10 | September 2024

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Report Highlights

Wyoming County

Audit Objective

Determine whether the Wyoming 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:

- Seven of 123 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 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 all businesses.

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 Finger Lakes region, is governed by an elected 16-member Board of Supervisors (Board).

The Chairperson of the Board also serves as the County's Chief Executive Officer, responsible for overseeing day-to-day operations.

The Director, who is assisted by two part-time field technicians, is responsible for the day-to-day operations of the Department.

Quick Facts

County Population	40,500
Number of Devices ^a	506
Businesses on Department Master List ^b	101
Department Budget	
Revenues	\$10,136
Expenditures	\$56,408

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

-
- 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, 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 123 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 seven of the 123 devices we identified that required testing, including:

- Four weighing devices,
- One linear measuring device, and
- Two timing devices.

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).

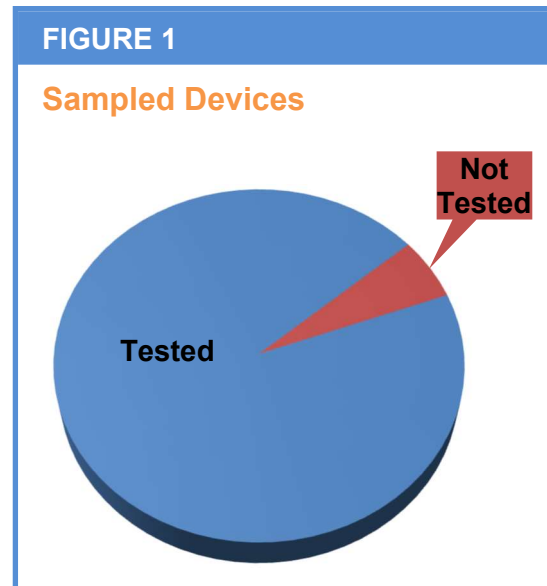
Although the other 116 devices were tested, these seven untested devices represent 6 percent of all required device inspections in our sample (Figure 1).

The Director told us:

- He was not notified that two weighing devices had been newly put into service at an existing business. The Department’s inspection form, provided to the business for a previous inspection, states that it is the responsibility of business owners to notify the Director when new devices are put into service or when modifications to existing devices occur.
- One business told a field technician that a weighing device in the showroom was used by customers to estimate the weight of commodities to purchase. However, during our fieldwork, we observed that an employee weighed and sold commodities using the scale.
- When a technician inspected a weighing device at a business in January 2023, he was unaware there was another scale onsite. The business owner told us that the other scale was used for pricing during the summer season.
- He instructed his field technicians not to test timing or linear measuring devices because he prioritized testing other devices, such as gas pumps and scales. He thought timing and linear measuring devices were the Bureau’s lowest-priority devices for testing.

According to regulations developed in conjunction with the AML, each of the untested devices should have been tested at least on a yearly basis. Further, the regulations do not prioritize one type of device over another for testing.

During the audit period, the Director also collected 100 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, or within the acceptable tolerance level of,⁴ the amount reported on the pump for all 15 tests. The Department received approximately \$6,000 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 the reimbursement for the fuel octane tests.



4 1 NYCRR Section 224.3

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, nor was he aware of any resources he could use. Although the County’s public health technicians notified the Director when they found businesses during their inspections that may need inspections from the Department, he did not work with other County departments to find out when new businesses opened to update the master list. Instead, the Director added businesses to the master list:

- That his technicians found when they drove to locations to conduct testing, and
- Based on responses to inquiry letters mailed to businesses that likely used scales, such as farm stands, requesting information on their usage.

The Director did not maintain a complete list of businesses subject to weights and measures testing. For example, because the Director thought the Bureau considered their testing to be a low priority, the master list did not include all businesses with timing devices, such as laundromats and car washes.

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 Department documents each complaint on an investigation form showing the details of the complaint, the location, date, and resolution.

The Director received two complaints during the audit period. The Director retained documentation for both complaints investigated and they were resolved within four business days.

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.

The Director told us he did not conduct any price accuracy testing because it is not mandatory. During our scope period, a Weights and Measures Specialist from the Bureau conducted five price inspections as a courtesy for the County. The Weights and Measures Specialist told the Director the inspections were randomly selected and done for the counties that do not perform price accuracy audits.

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 and up-to-date inventory of devices used for pricing accuracy, weighing and measuring.
4. Develop and implement procedures for price accuracy testing.

Appendix A: Response From County Officials



WYOMING COUNTY

Government Center
Main Street
Warsaw, NY 14569
(585) 786-8817
E-mail: sschrader@wyomingco.net

SCOTT A. SCHRADER
County Administrator

June 28, 2024

██████████
Office of the State Comptroller, Statewide Audits
Division of Local Government and School Accountability
Via email: Statewide Audit Unit at Muni-Statewide@osc.ny.gov

RE: Wyoming County Consumer Protection: Accuracy of Weights and Measures Report of Examination S9-24-10

Dear ██████████:

This correspondence is acknowledging and responding to the above-referenced draft audit findings dated June 10, 2024.

Finding 1: Seven (7) of one hundred twenty-three (123) devices reviewed were not inspected as required.

Response: Agree with Finding 1. The devices listed were not inspected. Wyoming County makes every effort to inspect and prove all mandated devices annually. To a large degree the Department is only able to inspect those devices that are either evident or made evident by the establishment. Upon investigation, in one instance, it was determined two of the weighing devices were put into service without notification to this department; in another instance, one weighing device was inspected and the facility had been notified the device was not to be used as an official weighing device as it was not a type approved device and could not be certified. The other four devices were not inspected and were not on the department's device inventory.

Planned Actions: This office will continue to seek out new or previously unknown devices and adds these to the agency Master List for inspection. The Department will reinforce instructions to its inspectors to inquire of the establishment whether there are any mandated devices that could be used during the year that would need to be evaluated in an attempt to address untested devices from the current estimated six present found within the audit. Linear measure devices are now being evaluated; this will be future practice. As NYS Weights and Measures has recently removed timing devices from the mandated device list, this office will place low priority on testing such devices, most likely based on complaints only.

Responsible Party: The Director of Wyoming County will ensure identified mandated devices within the county will be inspected on an appropriate schedule.

Supporting Documentation: Attached please reference a Wyoming County Weights & Measures inspection report dated September 19, 2023. The report specifically notes that a weighing device was not to be used as an official measure for pricing purposes.

Finding 2: There is 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.

Response: Disagree with Finding 2. The Wyoming County Weights & Measures Office has an extensive list of businesses and devices, which is continually updated. Ongoing updates occur as employees of both Weights & Measures and the Health Department identify changes in businesses during the course of their work and travels within the County. These observations inform ongoing updates to the master list of businesses with weighing and measuring devices in Wyoming County.

Planned Actions: Wyoming County acknowledges a more robust system could be possible. Dialog will occur with the Office of the Wyoming County Clerk to determine the possibility of information sharing between the departments in instances wherein the Clerk's Office receives and files business applications that may utilize weighing and measuring devices.

Responsible Party: The Director of Wyoming County Weights and Measures will initiate dialog with the Office of the County Clerk in pursuit of a sensible means to exchange needed information.

Finding 3: The Department did not develop and implement procedures for price accuracy testing.

Response: Acknowledge this finding. The provisions of NYS Agriculture and Markets Law do not identify price accuracy testing as a mandated function of the Wyoming County Department of Weights & Measures. As such this office would only respond to complaints received from the public.

Planned Actions: Lacking a specific regulatory requirement to do, the Wyoming County Department of Weights & Measures will not perform price accuracy testing on a routine basis. NYS Weights and Measures officials may periodically test price accuracy in facilities within Wyoming County, should they choose to do so. The Wyoming County Department of Weights & Measures will respond to consumer complaints regarding price accuracy with assistance from State Weights and Measures staff.

See Note 1 Page 10

Wyoming County is committed to identifying and implementing improvements to ensure compliance and efficiency within our operations. Special thanks to [REDACTED]; it was a pleasure to work with them both through the audit process.

If you require further clarification or additional information regarding this response, please do not hesitate to contact Rob Jines, Wyoming County Director of Weights and Measures at rjines@wyomingco.net or (585) 786-8894. We remain available, at your convenience, to discuss any aspects of the audit findings in detail.

Thank you for your attention to this matter and for your role in maintaining the highest standards of consumer protection in Weights and Measures for residents of Wyoming County.

Respectfully,

Scott A. Schrader
County Administrator

WYOMING COUNTY WEIGHTS & MEASURES
 ROBERT W. JINES, Director
 5362 Mungers Mill Road, Silver Springs, NY 14550
 (585) 786-8894

No 911

Retest
 Retest Required

DEVICE INSPECTION AND TEST FORM

JURISDICTION COUNTY OF WYOMING		DATE 9/19/23
ESTABLISHMENT Warsaw Nut Packing		STORE NO.
ADDRESS 3865 Miller Rd.		TELEPHONE NO.
TOWN/CITY Warsaw		ZIP CODE 14569
<input type="checkbox"/> Supermarket <input type="checkbox"/> Food Store/Deli <input type="checkbox"/> Farm/Produce <input checked="" type="checkbox"/> Fish/Butcher <input type="checkbox"/> Ag Crop/Fertilizer <input type="checkbox"/> Drug <input type="checkbox"/> Hardware <input type="checkbox"/> Marina <input type="checkbox"/> Gas Station <input type="checkbox"/> Gas Station/Store <input type="checkbox"/> Farm Feed/Supplies <input type="checkbox"/> Fuel Oil Dealer <input type="checkbox"/> Process/Ware/Manuf. <input type="checkbox"/> Other: <input type="checkbox"/> Airport <input type="checkbox"/> LPG Dealer <input type="checkbox"/> Asphalt/ Salvage <input type="checkbox"/> Non-Commercial Establishment		

DEVICE TYPE	TOTAL No.	VISUAL INSPECTION				TEST				FEES		
		FOUND CORRECT	CORRECTED	OTHER	NOTSEALED	PLUS ERROR	MINUS ERROR	OTHER	ORDERED REPAIRED	CONDEMNED	RATE PER DEVICE	TOTAL
Computing Scale												
Pre-Pkg. Scale												
Monorail Scale	1	1									100	100
Vehicle Scale												
Prescription Scale												
Hopper/Batch/Tank Scale												
Platform Scale												
Livestock Scale												
Petroleum Pumps												
Petroleum Meters VTM												
Weights												
Timing Device												
Misc Device												
Totals												100

Devices listed below require repair or adjustment:

MANUF.	MODEL No.	SERIAL No.

- Notify Rob Jines, Director of Weights and Measures when ready for retesting
- Customer scale required by prepack display with sign posted.
- Price signs, posted on every pump or dispenser.
- Security seals on all approved devices.
- Product used for testing as shown on this form was returned to proper storage tank, as instructed by operator.

87 Octane	Fuel Oil

Remarks: *Small scale in cutting room not a type approved scale, scale is not used for pricing, does not need to be certified.
 S/N: 220311 49986

****You will receive an invoice for fees on this report****

It is the user's responsibility to maintain the accuracy of all weighing and measuring devices. Scales must be free of foreign matter, level, on a solid base and must start at zero. Notify the Director immediately of any new, repaired or reconditioned weighing and measuring device which will be used commercially. Invoiced charges shall be paid within 30 days.

ACKNOWLEDGED BY: _____	INSPECTOR _____
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Appendix B: OSC Comment on the County's Response

Note 1

Although the AML and regulations do not specify the frequency of price accuracy testing, the AML requires counties to adopt and implement price accuracy provisions (provisions) in accordance with those specified in the AML, and any subsequent regulations, when a preexisting local price accuracy law or regulation is not in effect. These provisions include testing procedures for pricing accuracy consistent with the 2006 edition of the *National Institute of Standards and Technology Handbook* (NIST Handbook).⁵ The NIST Handbook does suggest having routine inspections to help ensure stores maintain price accuracy.⁶

⁵ NYCRR Section 220.14

⁶ *National Institute of Standards and Technology Handbook* 130 (2006) "Examination Procedure for Price Verification" <https://www.nist.gov/system/files/documents/2017/05/09/hb-130-06-final-pdf.pdf>

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 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 six businesses located within County limits and attempted to trace these to the Department's master list and selected six businesses from the master list and visited these locations to determine whether the master list was accurate and complete.
- We selected 20 out of 101 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.
- Using a non-biased judgmental sample, we selected 15 out of 100 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 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

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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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Local Government and School Accountability Help Line: (866) 321-8503

STATEWIDE AUDITS – Dina M.L. Thompson, Chief of Municipal Audits

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