



**ANNUAL REPORT ON THE TESTING AND
INSPECTION ACTIVITIES OF THE
DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES
WEIGHTS AND MEASURES PROGRAM**

Todd P. Haymore, Commissioner

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Department of Agriculture and Consumer Services Weights and Measures Program**

Document Title

Annual Report on the Testing and Inspection Activities of the Department of Agriculture and Consumer Services Weights and Measures Program

Author

Commissioner of Agriculture and Consumer Services (herein, Commissioner)

Enabling Authority

§ 3.2-5609(B) of the Code of Virginia

EXECUTIVE SUMMARY

This document is submitted pursuant to §3.2-5609(B) of the Code of Virginia, which requires the Commissioner to report annually to the Chairmen of the Senate Committee on Finance and the Senate Committee on Agriculture, Conservation and Natural Resources, and the Chairmen of the House Appropriations Committee and House Committee on Agriculture, Chesapeake and Natural Resources, the results of testing and inspection activities carried out by staff in the weights and measures program of the Virginia Department of Agriculture and Consumer Services (VDACS), including the number and frequency of inspections. During the fiscal year ending June 30, 2009, staff inspected 45,903 weights and measures devices that are used in commercial transactions in Virginia, posted an overall frequency of inspection per device of 31 months, and investigated 2,619 consumer complaints.

I. OVERVIEW

The General Fund appropriation for the weights and measures program (program) during fiscal year (FY) 2009 was \$2,244,057. During this period, staff inspected 45,903 weights and measures devices, or approximately 38.9% of the estimated total number of devices being used in commercial transactions in Virginia. The overall frequency of inspections was 31 months. An unprecedented number of consumer complaints, coupled with device re-inspections and the training requirements associated with a new software application, impacted the total number of routine inspections.

II. WEIGHTS AND MEASURES DEVICES IN VIRGINIA

The agency estimates that there are approximately 118,000 weights and measures devices being used commercially in Virginia. Approximately 69% of those devices are retail petroleum product dispensers, followed by retail scales (approximately 21%), truck stop dispensers (approximately 4%), vehicle tank meters and vehicle scales (approximately 1.8% each), and liquefied petroleum gas (LPG) dispensers (approximately 1.3%). The remainder of the weights and measures devices subject to inspection includes bulk plant meters, warehouse scales, farm scales, vehicle on-board weighing systems, hopper scales, livestock scales, railroad scales, and other miscellaneous devices.

The program is currently in the implementation phase of WinWam, an automated application designed to support field inspection activities in accordance with the provisions of National Institute of Standards and Technology Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*. The software automatically calculates testing tolerances and allows for extensive customization. The software also maintains a comprehensive database of business establishments and a complete inventory of associated devices, including history of inspections. The software also allows for the capture of digital signatures, so that signed inspection reports can be printed either in the field or at the home office. Once deployed and fully operational, WinWam will allow the program to determine with greater precision the number of weights and measures devices used commercially in the Commonwealth.

III. STAFFING

During the reporting period, 35.5 full-time equivalent (FTE) positions were assigned to the program. One-half FTE was allocated to the program Manager and one FTE was allocated the regulation and sampling of motor fuel quality. Twenty four FTE positions were involved in the testing of retail motor fuel devices and retail computing scales, as well as medium-capacity bench, counter, and floor scales; these positions were also tasked with determining the accuracy of point-of-sales systems, verifying the accuracy of packaged commodities, enforcing advertising and method-of-sale requirements, and investigating consumer complaints. Eight positions were engaged in the testing and inspection of large-capacity weighing and measuring devices, such as fuel oil and LPG meters – both vehicle mounted

and bulk – as well as large-capacity scales. All field inspectors were responsible for the enforcement of the Commission Merchant, Cotton Handlers, Weights and Measures Service Agencies and Technicians, Burley Tobacco, and Public Weighmaster Laws. Two FTE positions performed calibrations in the Metrology Laboratory in Richmond for a variety of government and industry clients. The program also utilizes two part-time employees to inspect livestock scales annually at approximately 250 farms. Although there was no personnel turnover at the inspector level during the reporting period, the program lacked adequate funding to fill all inspector positions; thus, eight inspector vacancies remained unfilled.

IV. INSPECTION ACTIVITIES

33,427 inspections were completed on devices used to dispense petroleum products, including gasoline, diesel fuel, fuel oils, liquefied petroleum gas (LPG), and kerosene. Approximately 95.6% of these inspections involved retail motor fuel dispensers, with a rejection rate of approximately 18%. Other rejection rates were approximately 17% for vehicle tank meters, 21% for LPG meters, and 23% for truck stop meters.

12,476 inspections were completed on devices used to weigh retail purchases, road and other construction materials, agricultural products, and household goods. Approximately 86% of these inspections involved retail scales, with a rejection rate of approximately 10%. Other rejection rates were approximately 13% for farm scales, 14% for hopper scales, 18% for livestock scales, 23% for vehicle scales, 33% for warehouse scales, and 44% for on-board weighing scales.

8,330 petroleum dispensing devices and 1,750 weighing devices were re-inspected. The analysis of re-inspection data helped staff identify areas to emphasize during the training sessions provided to service technicians. With the deployment of WinWam, the program expects to have more precise rejection data to help manage re-inspections.

Approximately 58,000 samples were verified as part of the program's sampling activities related to motor fuel quality (e.g., octane levels, ethanol content, etc.), accuracy of packaged commodity weights (e.g., pre-packaged ground beef, steak, seafood, etc.), sales of agricultural products (e.g., grain packages, leaf tobacco bales), and point-of-sales pricing systems (e.g., grocery store check-out scanners). Samples included approximately 24,780 store-prepared packaged commodities, approximately 30,720 point-of-sale pricing verifications, and more than 2,500 motor fuel samples.

Approximately 11,680 calibration tests were performed by staff in the Metrology Laboratory. More than two thirds of the tests involved tolerance tests of weight standards. Staff also tested approximately 3,000 radar tuning forks.

A total of \$83,330 in civil penalties was assessed for 453 documented violations of the Virginia Weights and Measures Law.

V. COMPLAINT INVESTIGATION ACTIVITIES

Staff investigated 2,619 consumer complaints during the reporting period, which is more than four times the typical complaint workload in previous years.

One particular event that impacted staff's availability to inspect devices was the program's response to the disruption in the flow of petroleum products coming into Virginia from the Gulf Coast during the 2008 hurricane season. On September 12, 2008, Governor Kaine issued Executive Order 77, "*Declaration of a State of Emergency in Support of the Emergency Management Assistance Compact to Respond to the Impact of Hurricane Gustav and Hurricane Ike in the Gulf Coast States.*" The Declaration of State Emergency activated the provisions of Virginia's Post-Disaster Anti-Price Gouging Act (Act), which applies to the price of motor fuels and other essential consumer goods and services. By initiating the Act, the Governor set in motion a mechanism to respond to and investigate price gouging complaints resulting from the anticipated reduction in the availability of motor fuels caused by the precautionary shut-down of key motor fuel production facilities in the Gulf of Mexico. From the time the Executive Order was issued, all program field inspectors were put on alert to respond as quickly as possible to consumer complaints about possible gas price gouging. VDACS provided round-the-clock coverage of the Consumer Protection Hotline from Saturday, September 13 to Friday, September 19, 2008, and received more than 2,500 calls during that time, most of which originated from South Central and South Western Virginia. Staff investigated approximately 1,140 of those complaints and, in consultation with the Office of the Attorney General, submitted a number of investigative referrals to that office for possible legal action. In addition to investigation price gouging complaints during this time, VDACS also worked with the Governor's office in an effort to increase the availability of gasoline throughout Virginia and address supply concerns. The Governor waived certain specifications that prescribe volatility standards for gasoline. This action allowed the immediate distribution in Virginia of gasoline blends that would normally not have been allowed until the first of October.

Another event that required significant staff effort and consumed considerable time was the program's response to complaints involving excessive ethanol in gasoline sold in the Tidewater area in June 2009. For several weeks carrying into July, inspectors in South Eastern Virginia dedicated their time exclusively to the investigation of approximately 560 complaints.

Altogether, the investigation of complaints during the reporting period required 2.3 man-years. This unprecedented workload significantly reduced staff's availability to conduct routine inspection of devices.

VI. WEIGHTS AND MEASURES IN THE 2009 GENERAL ASSEMBLY

During the 2009 session of the Virginia General Assembly, the House of Delegates and the Senate approved an amended budget conference report for Fiscal Year 2010 that contained

a provision to privatize the program. Under the privatized program, owners of weights and measures devices would have been required to provide for the inspection and testing of their devices by private service agencies to determine the accuracy and correct operation of the devices. In addition to privatization of the weights and measures function, the amended budget would have also required motor fuel and lubricating oil manufacturers, wholesalers, jobbers and retailers to submit product test results to VDACS on an annual basis. The amended budget report reduced the budget for the weights and measures and motor fuels programs by \$1,250,000.00.

The privatization of the program would have had far reaching implications, from job losses at VDACS to the potential impact on consumers and businesses. Consequently, Commissioner Todd P. Haymore convened a meeting of stakeholders to evaluate the impact and ramifications of the proposal. There was general agreement among the participants that the provision of a sound program is a core function of government that is necessary in order to maintain confidence in the marketplace, for both industry and consumers. Participants commented, among others, that the program has not been adequately funded since the early part of this decade, and they generally expressed concern over the continued integrity of the program if privatization was implemented. The consensus of the group, though, was for VDACS to request that Governor Kaine veto the privatization proposal. Further, the group also wanted the Governor to call on VDACS to formally convene a stakeholders meeting to study and report on potential methods of future funding in order to operate an effective and efficient regulation of the weights and measures and the motor fuels programs.

Governor Kaine vetoed the privatization proposal and restored affected funding by returning Item 98 in the budget bill to the form in which it was enacted in Chapter 879, 2008 Acts of Assembly. The Governor's veto was sustained unanimously by the General Assembly. In conjunction with his veto, the Governor asked Commissioner Haymore, with guidance from Secretary of Agriculture and Forestry Robert S. Bloxom and input from representatives from local government, private sector organizations, and the public, to evaluate and explore ways to enhance the program.