



KANSAS LEGISLATIVE
DIVISION *of*
POST AUDIT

A Performance Audit Report Presented to the Legislative Post Audit Committee

Evaluating the Department of Agriculture's Price Verification Inspection Process

November 2020

Report Number: R-20-015

Introduction

Senator Carolyn McGinn requested this audit, which was authorized by the Legislative Post Audit Committee at its June 1, 2020 meeting.

Objectives, Scope, & Methodology

Our audit objective was to answer the following questions:

1. What were the results of recent price verification inspections?
2. How do other states ensure adequate inspection coverage for point-of-sale systems?

This audit follows our March 2019 limited-scope audit that identified issues with inspection coverage. This audit looked at the results of recent price verification inspections. We also looked at how the Kansas Department of Agriculture (KDA) responded when businesses failed inspections. Finally, we looked at how other states decide what adequate coverage is for their price verification inspections.

To do this, we reviewed price verification inspection reports from fiscal years 2018 through 2020. We reviewed a few cases where KDA penalized businesses in detail. These cases were not selected randomly, and the results of our review cannot be projected to all cases. We also interviewed KDA officials and price verification officials in other states.

Our work did not include a review of other states' inspection results. It also did not look at how other states penalize businesses when they fail inspections.

More specific details about the scope of our work and the methods we used are included throughout the report as appropriate.

Important Disclosures

We conducted this performance audit in accordance with generally accepted government auditing standards. 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 objectives. Overall, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on those audit objectives.

Audit standards require us to report limitations on the reliability or validity of our evidence. In one analysis, we used inspection reports where inspectors noted item prices and reasons for any incorrect prices. We couldn't evaluate the reliability of this data. That's because we couldn't verify that inspectors correctly recorded items' prices or the reasons items were mispriced. But we also don't think the data was highly inaccurate or that it undermines our overall conclusions.

Audit standards require us to report our work on internal controls relevant to our audit objectives. They also require us to report deficiencies we identified through this work. In this audit, we reviewed controls for ensuring KDA's inspection reports are accurate. We learned that KDA reviews some, but not all, reports for accuracy. Based on our review of KDA's inspection reports we estimate that only 1% of reports from each fiscal year showed a business passed inspection when it actually didn't. We consider this a minor issue and shared it with agency officials in a separate management letter.

In fiscal years 2018-2020, retail businesses failed most price verification inspections and the Kansas Department of Agriculture (KDA) did not respond consistently to those failures.

Background

KDA's Weights and Measures program oversees the accuracy of commercial pricing and measuring systems across Kansas.

- The Weights and Measures program has two divisions. One division is the petroleum measurement evaluation program (PMEP). The other is the marketplace equity protection program (MEPP). KDA staffs these divisions separately.
 - The PMEP oversees petroleum distribution in the state. Its responsibilities include annual inspections of all gas pumps in the state. We didn't investigate the PMEP as part of this audit.
 - The MEPP oversees all other types of weighing and measuring devices in the state. This includes inspecting commercial scales, package labels, and point-of-sale systems.
- This audit focuses solely on the MEPP and its point-of-sale system inspections of physical stores. Those inspections are called price verification inspections. KDA doesn't verify the accuracy of prices for online items and isn't sure whether it has the authority to do so under current state law.
- The MEPP has a total of 6 inspector positions, but only 4 of those positions are currently filled. Inspectors perform all inspections for which the program is responsible. For example, an inspector might do a scale inspection and a point-of-sale system inspection in the same day.

Inspectors check the accuracy of businesses' posted prices through price verification inspections.

- Price verification inspections check whether retail businesses' point-of-sale systems charge consumers according to posted prices. State law (K.S.A. 83-219) requires that businesses charge consumers whatever prices they advertise. KDA inspects grocery stores, big box stores like Target, hardware stores, and other retail stores to see if businesses are complying with state law.
- A point-of-sale system is any combination of devices that determines the prices of items sold at retail (e.g., a checkout register). In other words, the system retailers use to determine how much to charge consumers. Point-of-

sale systems often use things like scanners and bar codes to do this. A point-of-sale system may include a scale but doesn't have to.

- Businesses may change their prices frequently. One KDA official told us two office supply stores changed their prices daily to compete with one another. When this happens, businesses must make sure price tags and sales signs match what's in their point-of-sale system database. Some businesses may have staff who check prices for accuracy.
- State law (K.S.A. 83-206) requires KDA to do price verification system inspections. Neither state law nor administrative regulations say how many inspections KDA should do.
- During an inspection, an inspector visits a retail site and collects and tests 50 or 100 items. For each item, the inspector checks whether the posted price (e.g., what's on the price tag or shelf label) matches the price charged at checkout. The two values should match. Inspectors may also review signs and sale offers. Items checked can range in price from less than \$1 (e.g., candy) to \$1,000 or more (e.g., refrigerators).

Businesses fail inspections when more than 2% of items inspectors check are mispriced.

- According to KDA's policies, a business fails inspection if advertised prices don't reflect what consumers will pay at the point of sale for more than 2% of the items tested. In other words, a business's posted prices must be at least 98% accurate to pass inspection. For example, to pass a 50-item inspection, no more than 1 item can have a pricing error.
- A pricing error is when a business overcharges or undercharges a consumer. Some undercharges may be intentional, and if so, don't count against the retailer.
- After the items have been checked, the inspector determines if the business passed or failed the price verification inspection.
- If a business fails inspection, KDA's policy is to conduct a follow-up inspection. The more items that were mispriced, the sooner the follow-up inspection should happen. State law also allows KDA to take legal action against a business when KDA finds mispriced items. This may include issuing fines.

Inspection Coverage

KDA conducted a total of about 1,800 price verification inspections in fiscal years 2018 through 2020.

- KDA conducted a total of 1,808 inspections in fiscal years 2018 through 2020. As **Figure 1** shows, inspection counts varied from year to year. KDA stopped doing inspections in March 2020 due to COVID-19. That's why inspections for that year were lower than the other two.

Figure 1

The number of price verification inspections varied across fiscal years.

Fiscal Year	# Inspections	# Businesses Inspected	# Items Inspected (b)
2018	536	365	42,550
2019	911	686	77,312
2020	361	299	28,051
Total	1,808	926 (a)	147,913

(a) Rows do not add because KDA sometimes inspected the same businesses in multiple fiscal years.

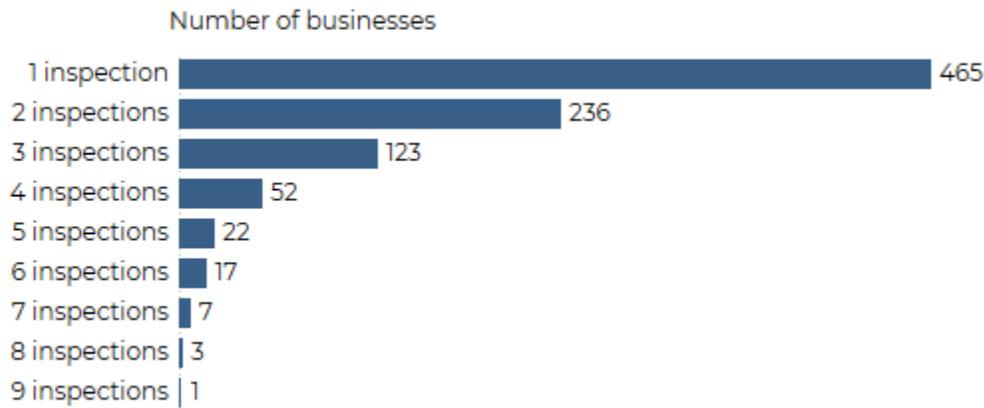
(b) Due to minor errors (e.g., duplicated reports), these figures may not exactly reflect the number of items checked.

Source: KDA program summary data (audited).

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- About half of the 1,808 total inspections were initial inspections. The other half were follow-up inspections.
 - Initial inspections are the first inspections of each unique business in the time period we reviewed (FY 2018 – 2020). If a business was inspected prior to fiscal year 2018, our analysis treats it as an initial inspection even though it was actually a follow-up. As a result, our analysis overcounts initial inspections and undercounts follow-up inspections.
 - Follow-up inspections are any inspections that happened after an initial inspection. KDA frequently inspects the same business more than once. **Figure 2** shows how many times KDA inspected each business during the 3 years we reviewed. As the figure shows, KDA inspected one business 9 times.

Figure 2
KDA inspected businesses as many as 9 times in the years we reviewed.



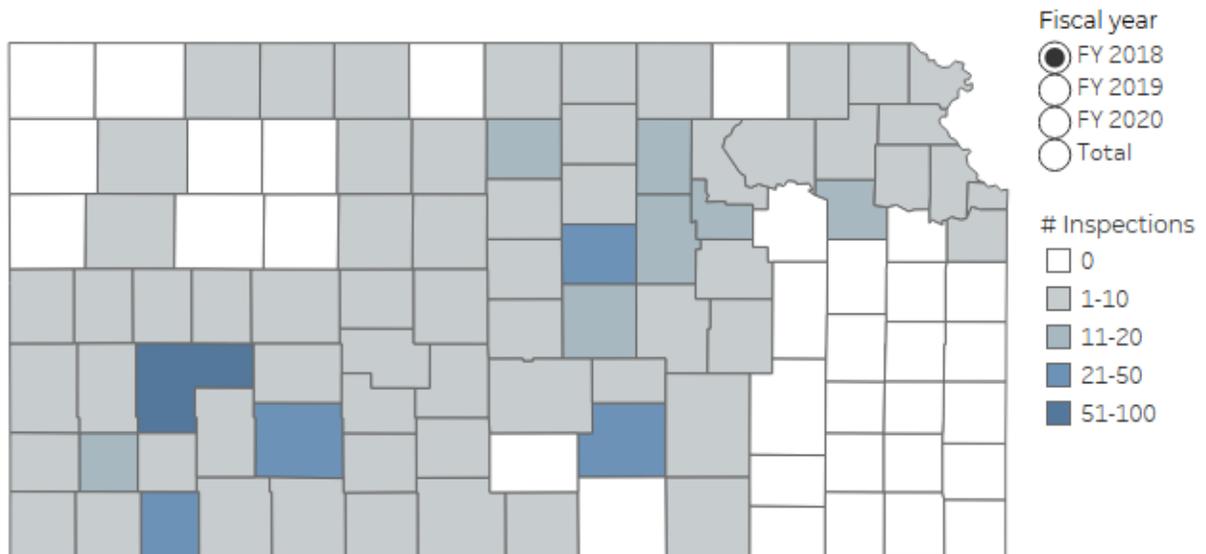
Source: LPA analysis of KDA inspection data.

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KDA’s inspections only covered a small percentage of all Kansas retail businesses and did not cover certain parts of the state.

- Even though state law does not specify how many businesses KDA should inspect each year or where, we expected KDA’s inspections to cover a fair amount of businesses across all areas of the state annually.
- We estimate KDA inspected less than 7% of Kansas retail businesses each year. The total number of point-of-sale systems in the state is unknown. We used estimates from the U.S. Census Bureau to approximate how many systems there might be statewide. According to those estimates, there were about 10,000 retail businesses in Kansas in 2018. As shown in Figure 1, KDA inspected between 299 and 686 businesses each year we reviewed. That’s only about 3%-7% of retail businesses in Kansas each year.
- KDA didn’t inspect businesses in all parts of the state each fiscal year. For example, as **Figure 3** shows, KDA did no inspections in southeast Kansas in fiscal year 2018. Further, KDA did not inspect any businesses in 8 counties in all 3 years we reviewed (Cherokee, Gove, Kingman, Labette, Rawlins, Wabaunsee, Wallace, and Wilson).
- Further, inspections didn’t correspond with county populations. For example, Finney, Ford, and Seward counties have about 3% of the state’s population. About 17% of price verification inspections in the data we looked at were in those three counties. By contrast, Johnson and Sedgwick counties have almost 40% of the state’s population. Only about 24% of all inspections were in those counties.

Figure 3
KDA did not do inspections in all counties.



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(a) County populations are for 2019.

Source: LPA analysis of KDA inspection data and population data from the U.S. Census Bureau (unaudited).
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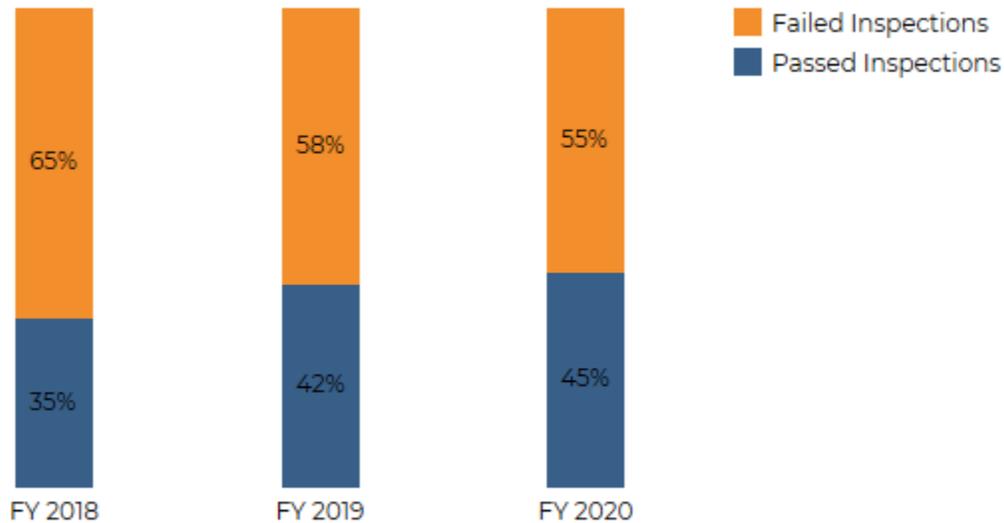
- This was because price verification inspections are not the program's top priority. The program prioritizes scale inspections. Then, inspectors fill empty space in their schedules and choose when and where to do price verification inspections. KDA officials also said the lack of inspections in southeast Kansas in fiscal year 2018 was due to a vacant inspector position.

Inspection Results

Businesses failed more than half (about 60%) of price verification inspections conducted in fiscal years 2018 through 2020.

- Businesses failed most of the price verification inspections done in fiscal years 2018 through 2020, as **Figure 4** shows.
- Further, businesses that failed one inspection tended to also fail the next inspection. We identified 383 businesses that failed an inspection and then had a follow-up. 252 businesses (66%) failed both inspections. Businesses generally had fewer mispriced items in their follow-up inspections. But improvements weren't enough to pass inspection.

Figure 4
Businesses failed more than half of all price verification inspections in fiscal years 2018 through 2020.



Source: LPA analysis of KDA program summary data.

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- About half of KDA's inspections were in discount stores, grocery stores, and big-box stores (e.g., Wal-Mart, Target). Discount stores had more mispriced items than other kinds of stores. In the average discount store inspection, about 7% of the items inspectors checked had incorrect prices. In grocery and big-box store inspections, about 4% of items inspectors checked had incorrect prices.

Pricing undercharges were slightly more common than overcharges, but inspection results don't necessarily reflect an individual consumer's shopping experience.

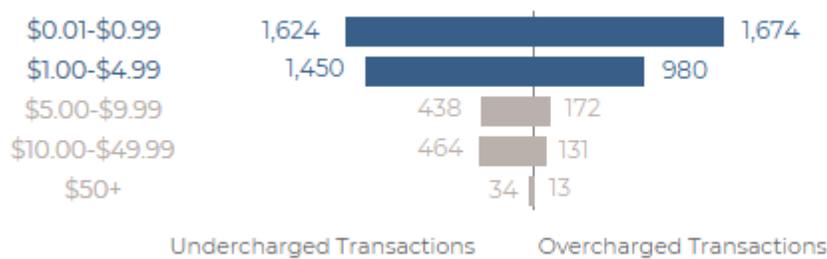
- According to program data, about 7,000 (5%) of the nearly 150,000 items checked in fiscal years 2018 through 2020 were incorrectly priced. This means inspectors found about 1 mispriced item for every 20 items they tested.
 - About 3,000 items (2% of all items) were overcharges. If a consumer were to buy one of these items, they would pay more at the register than they expected.
 - About 4,000 items (3% of all items) were undercharges. If a consumer were to buy one of these items, they would pay less at the register than they expected.

- The results of price verification inspections can't be used to draw conclusions about individual Kansas consumer's shopping experience. That's because price verification inspections don't target items consumers are most likely to buy. Instead, they are designed to randomly test all items sold in a store.

Incorrectly priced items were most frequently mispriced by less than \$5.

- We reviewed inspection reports to see the amounts by which items were mispriced. Readers should be aware we couldn't test the reliability of the detailed data in each inspection report.
- As **Figure 5** shows, most incorrectly priced items were off by less than \$5.00. When items were mispriced by larger amounts, they tended to be undercharges. For example, the biggest price discrepancy in the data we reviewed was an undercharge. Inspectors found a refrigerator with a \$1,899.99 price tag that rang up to \$1,149.97 (a \$750.02 undercharge).

Figure 5
Incorrectly priced items were most often mispriced by less than \$5.00.



Source: LPA analysis of KDA data.

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- Incorrect prices harm both consumers and businesses. For example, overcharges may cause consumers to spend more than they expected. Undercharges may cause businesses to lose out on sales.
- Large overcharges may be most concerning to consumers. Consumers could spend much more than they intended if these issues go unnoticed. For example, inspectors found a king size mattress with a \$398.00 price tag that rang up to \$649.00 (a \$251.00 overcharge).

Incorrect signage and stocking errors were the primary causes of incorrect prices.

- We interviewed KDA officials and reviewed program data to understand the causes of incorrect prices. Inspectors sometimes left notes in their reports about why items were mispriced. They did this for about 40% of the mispriced

items they identified in fiscal years 2018 through 2020. We relied on a KDA official's verbal explanation to identify the cause of the other 60% of mispriced items.

- Incorrect signage (e.g., a missing sale sign or outdated price tag) was the most common cause of incorrect prices. For example, a business might mark an item 50% off in its point-of-sale system database but forget to update the item's price tag. Based on inspectors' notes and KDA's explanation, incorrect signage caused about 90% of all mispriced items inspectors found.
- Stocking errors (e.g., when staff put items in the wrong place) were the second most common cause of incorrect prices. For example, store staff may accidentally put items near a price tag for a different item. This could mislead consumers about the item's actual price. Inspectors identified stocking errors as the cause of 8% of mispriced items they found.

KDA's Responses to Failed Inspections

KDA may respond to failed inspections by conducting follow-up inspections or taking legal action.

- KDA decides how to respond to failed inspections. State law doesn't prescribe when or how KDA should penalize businesses.
- When a business fails inspection, KDA's policy is to conduct a follow-up inspection. KDA policy also says follow-up inspections should be conducted sooner for businesses with high failure rates.
- KDA pursues legal action only for repeat overcharge violations. KDA's policy says staff may take legal action against a business if it fails two consecutive inspections with overcharges. They use the word "may" so they can exercise discretion over when to assess penalties.
 - If a business fails two consecutive inspections with overcharges, KDA may issue a summary order. This is an official legal notice of noncompliance.
 - If a business then continues to fail inspections with at least three more overcharges, KDA may file a civil penalty order. This is a financial penalty. KDA may assess a penalty for each mispriced item. K.S.A. 83-502 allows KDA to impose financial penalties of between \$100 and \$5,000 per violation.
- According to KDA officials, KDA will continue to inspect businesses, even after they pay penalties. KDA officials said this is because inspections are meant to bring businesses into compliance with state law. This means the only way a business should exit KDA's cycle of enforcement actions is by passing an inspection.

KDA didn't conduct timely follow ups on about 75% of the failed inspections we reviewed.

- We reviewed 506 failed inspections from September 2018 through August 2019. We didn't look at failed inspections before September 2018 because KDA officials told us they used different timeframes for follow-up inspections. We also didn't look at failed inspections after August 2019 because COVID-19 prevented KDA from conducting timely follow-ups. It's KDA policy to follow-up on some inspections after as much as 4 months. We wanted to be certain COVID-19 didn't affect the results of our analysis. So, we stopped looking at failed inspections early enough we could be confident COVID-19 wasn't the reason KDA didn't follow up timely.
- KDA either didn't follow up or was late following up on about 75% of the failed inspections we looked at. We compared the dates on the follow up inspections to KDA policies on inspection timeliness.
 - At the time of our work, KDA didn't follow up at all on 181 of the 506 (36%) failed inspections. On average, those 181 inspections had about 8% of items mispriced.
 - KDA followed up on 209 of 506 (41%) failed inspections more than 1 month later than it should have. When KDA was late to follow up, it was late by an average of about 5 months. And, for 9 failed inspections, it took KDA more than 1 year to inspect those businesses again.
- Lack of timely follow up means most businesses with poor price accuracy go unmonitored for significant periods. Further, this delays KDA's ability to take legal action against businesses.
- KDA officials said they lack enough staff resources to follow-up on all failed inspections in a timely manner. Further, they also told us they prioritize using staff for scale inspections more than price verification inspections. That's because there are more regulations for scale inspections. For example, KDA licenses and oversees private scale inspectors in Kansas. They also told us their scale trucks are expensive, and it would be wasteful to not use the trucks as much as possible.

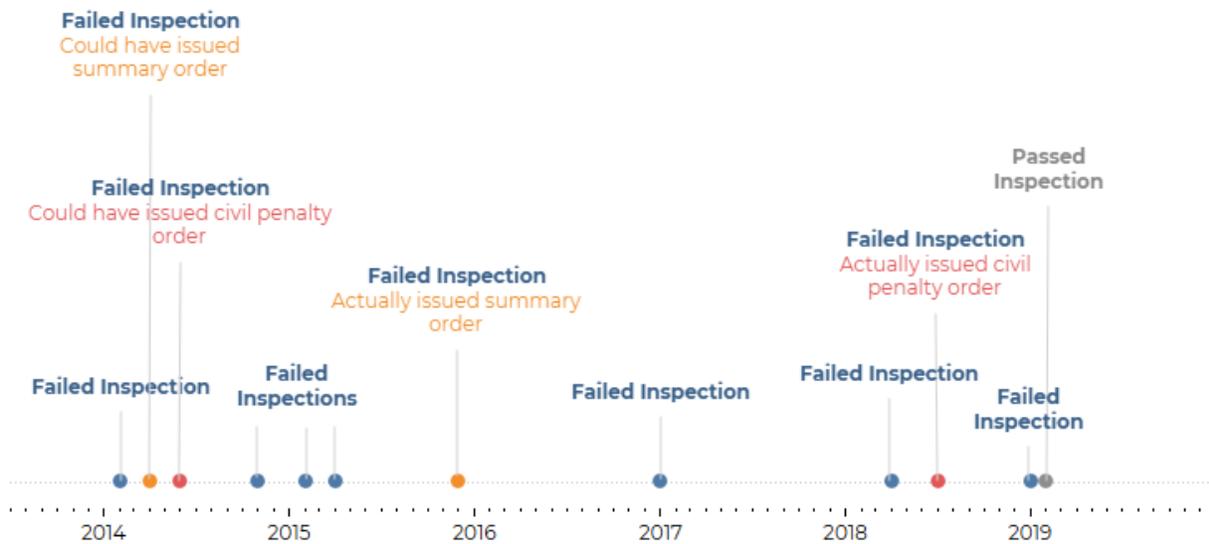
KDA issued legal orders later than it could have for businesses that failed inspections.

- We can't say how often KDA could have taken legal action against businesses it inspected but didn't. That's because we would have needed to review all businesses' inspection histories (which could go back further than fiscal year 2018). But we are confident KDA doesn't penalize businesses as early as it could. KDA issued civil penalties later than it could have to 4 businesses we looked at (discussed more below). It's very unlikely that we looked at the only

4 businesses where KDA issued civil penalties later than it could have. It's likely we would have found similar issues if we looked at different businesses.

- We picked 4 businesses from the list of 30 businesses KDA issued civil penalty orders to in the years we reviewed. The 4 businesses we looked at were from different parts of the state and were inspected by different inspectors. We traced businesses' inspection histories back to 2013 to see what led up to the civil penalty orders. This was to see whether KDA acted as early and consistently as it could. We also selected 1 other business KDA did not take legal action against. This was to evaluate a case where KDA did not take legal action when it could have.
- Based on our review, KDA took legal action much later than it could have. KDA officials told us they developed criteria for when to issue legal orders in 2015 and revised it further in 2018. We used KDA's 2018 criteria (described earlier) to evaluate the points at which KDA could have issued legal orders.
 - KDA could have taken legal action against 1 of the businesses we looked at, but it didn't. That business failed 6 consecutive inspections between June 2018 and October 2019. KDA could have issued a summary order after its August 2018 inspection and a civil penalty order after its January 2019 inspection. Instead, it inspected the business 3 more times between February and October 2019 and then conducted no further inspections. This shows KDA isn't as aggressive with legal action as it could be.
 - For the other 4 businesses, KDA issued civil penalties, but not as early as it could have. We determined KDA could have issued penalty orders after 4 failed inspections, on average. Instead, KDA issued penalty orders after 8 to 10 failed inspections. **Figure 6** shows how KDA acted later than it could have for one of the businesses we reviewed. As the figure shows, KDA inspected the business 12 times over a 5-year period. They kept re-inspecting because the business kept failing. KDA could have issued a summary order and civil penalty in 2014 (after 3 inspections). Instead, KDA waited until after a December 2015 inspection to issue a summary order and a July 2018 inspection to issue a civil penalty.
- Businesses with ongoing price accuracy issues went unpenalized for extended periods. This means businesses have little incentive to improve their price accuracy. This limits the effectiveness of KDA's inspections and likely increases the number of follow-up inspections KDA needs to do. About one third of the businesses KDA inspected failed all their inspections. Some businesses failed 6-9 consecutive inspections.
- KDA officials said they don't have enough administrative resources to issue legal orders on all cases and at the earliest opportunities. Officials also told us KDA administration has generally emphasized working with businesses to make improvements instead of penalizing them for noncompliance.

Figure 6
KDA didn't take legal action against one business as early as it could have.



Source: LPA review of one business's price verification inspection history.

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KDA's fines were small and KDA frequently reduced them further.

- KDA issued civil penalty orders to 30 businesses in the years we reviewed. 20 were Dollar General businesses across the state.
- KDA issued a total of \$62,500 in fines. KDA fined each business between \$500 and \$5,000. KDA fined businesses \$500 per recent overcharge but did not fine businesses for older overcharges. For example, one business had 18 overcharges during inspections conducted between November 2016 and May 2018. In November 2018, KDA fined the business for 10 overcharges from April and May 2018 inspections. It did not fine the business for the 8 older overcharges.
- Businesses paid only \$36,900 in fines (about 60% of what KDA issued in total). This was because KDA reduced fines for almost 50% of the businesses it fined.
 - For example, KDA fined 13 Dollar General stores a total of \$29,000. In July 2019, KDA agreed to waive all but \$5,800 of that amount if no more than an average of 6% of Dollar General's items were mispriced from June 2019 through August 2019. Dollar General did this. But before this (July 2017-May 2019), Dollar General failed 233 of 286 inspections with an average error rate of about 8%.

- When KDA penalized businesses, the penalties were small. This means businesses have even less incentive to improve their price accuracy. This further limits how effective KDA's inspections are and likely increases KDA's follow-up obligations. If KDA were more aggressive with penalties, it might not have to do as many follow-up inspections. This could let KDA use its resources to do things like inspect more unique businesses.

The 5 other states we reviewed lack a process to ensure adequate inspection coverage for point-of-sale systems, but they use inspection strategies Kansas could consider.

Background

Inspection coverage may not be the main issue with Kansas' price verification inspections.

- Our March 2019 limited-scope audit identified a lack of coverage as the main problem with Kansas' price verification inspections. We suggested the Legislature consider another audit so we could look at the issue further. Inspection coverage is still an issue for Kansas as discussed earlier in this report.
- But based on our other findings, it may not make sense to focus on increasing price verification inspection coverage. There are two reasons for this. First, price verification inspections don't seem effective at increasing businesses' price accuracy. If inspections aren't effective, it may not make sense to do more of them. And second, KDA didn't follow up timely on some failed inspections in fiscal years 2018 through 2020. It's unlikely KDA would be able to manage even more inspections and more follow-up inspections.
- However, we still wanted to address the audit objective. We included the following information about ways Kansas might increase coverage for its price verification inspections.

Inspection Coverage in Other States

We interviewed officials in 5 other states and reviewed industry standards to learn how other states determine adequate coverage for price verification inspections.

- Many other states do price verification inspections. We interviewed weights and measures officials in 5 states. We focused on learning how they determine adequate coverage for price verification inspections. We did not look at how they respond to failed inspections. We picked Colorado, Missouri, and Oklahoma because they are neighboring states. We picked Ohio and

Pennsylvania because we wanted to learn more about strategies they use, such as working with locals or retail businesses.

- The National Institute of Standards and Technology (NIST) publishes standards for price verification inspections. We reviewed the standards to see how they define adequate coverage for price verification inspections. The National Conference on Weights and Measures prepares and endorses this guidance.
- Kansas and the other states we worked with all base their price verification inspection processes on the standards NIST publishes. But they don't always follow all processes. For example, some officials told us they don't count undercharges in their inspections. Standards recommend counting both undercharges and overcharges.

Like Kansas, other states we reviewed don't make price verification inspections their top priority.

- Like Kansas, other states' weights and measures organizations have several oversight responsibilities. For example, all 5 states we reviewed told us their organizations inspect or oversee scales. But not all organizations have the same responsibilities. For example, Missouri's weights and measures program does egg quality inspections, but Kansas' program does not. States also don't delegate inspection responsibilities the same. For example, Ohio law requires both the Department of Agriculture and county auditors to enforce weights and measures laws. This means Ohio county officials are required to assist the state by doing inspections.
- As in Kansas, other states don't make price verification inspections their top priority. This is because most other states don't have requirements about how many price verification inspections they should do. But they do have requirements for other kinds of inspections, such as for scales. Some officials also saw price verification inspections as less important to consumers. For example, some officials told us consumers can check price accuracy themselves. By contrast, one official noted that consumers can't check whether they got the correct amount of gas they paid for.
- Other states let their inspectors decide when and where to conduct price verification inspections. Inspectors in other states tend to do price verification inspections based on what their other inspection responsibilities allow. KDA gives its inspectors similar discretion.

Neither industry standards nor other states have specific criteria or point-of-sale system inventories to determine adequate inspection coverage.

- The standards NIST publishes don't offer clear guidance on how to achieve adequate coverage for price verification inspections. A NIST official told us programs should use data to plan future inspections. But standards do not

say how many businesses programs should capture in their data. It's also unclear how many inspections programs should do annually.

- Officials in all 5 states told us they don't use specific criteria to decide whether their inspection coverage is adequate. They also all told us their states don't define adequate coverage for price verification inspections.
- Officials also told us their programs don't have inventories of all businesses with point-of-sale systems. They generally told us they only track information about the businesses they've inspected. A few officials told us it would be impractical to build a complete inventory.
- Instead, officials made subjective assessments of their price verification inspection coverage adequacy. Officials identified two reasons they thought their coverage was adequate: lack of consumer complaints and high inspection pass rates.
 - A consumer complaint is when a consumer reports a business for price accuracy issues. This causes an inspection of that business. Officials said they receive few complaints. They said this meant their inspection coverage is adequate.
 - Officials also said businesses typically pass their price verification inspections. Officials took this as a sign their inspection activities were enough to promote compliance with price accuracy laws.
- These criteria don't seem sufficient to evaluate coverage. For example, a lack of consumer complaints doesn't mean there aren't problems. It could be that consumers didn't know how to report inaccurate prices, or resolved the issue at the store, or simply didn't know they had been overcharged in the first place.

Increasing Inspection Coverage in Kansas

Other states use some strategies that might help Kansas get to more businesses each year, but they each had some benefits and drawbacks.

- Other states didn't have criteria Kansas could use to assess coverage adequacy. But some of their practices might help increase inspection coverage in Kansas. Each strategy has some benefits and drawbacks.
- Kansas could ignore undercharges when determining whether a business should have a follow-up inspection (but not when determining whether a business fails inspection). Officials from Colorado, Oklahoma, and Pennsylvania told us they don't count undercharges as errors. We don't think KDA should stop counting undercharges as errors because undercharges are violations of state law. But KDA could adjust its follow-up criteria if it wanted to prioritize increasing coverage.

- This might allow KDA to get to more unique businesses because it wouldn't have to do as many follow-up inspections.
- But it would also require KDA to not follow up on some violations of state law. In Kansas, both undercharges and overcharges are unlawful. KDA officials expressed concern this would mean less protection for consumers. They also said businesses with undercharges may also have overcharges an inspection didn't detect by chance. Not following up on undercharges could mean not following up with businesses that have systemic price issues.
- Local Kansas governments could assist with inspections. Ohio requires county auditors' offices to do things like price verification and scale inspections. Local governments in Pennsylvania also do some price verification inspections.
 - This could increase inspection numbers and ensure geographic coverage. This is because there would be more groups throughout the state doing inspections.
 - But no local inspection programs exist in Kansas today. KDA officials told us some local governments used to do their own inspections. It would likely take changes to state law and significant planning to start them again. KDA would then be responsible for overseeing and training local inspectors.
- Kansas businesses could do their own price verification inspections. Pennsylvania has a program that allows business-affiliated inspectors to get certified in inspection procedures. Those individuals can inspect their businesses and submit results to the state.
 - This could also increase inspection numbers across Kansas. Like the prior strategy, this would increase how many groups would be doing inspections. Additional inspections might also come at no (or limited) cost to the state or local governments.
 - There are two potential issues with this strategy. First, Pennsylvania officials told us few businesses use the program. That's because they have no incentive to help the state. This would also be an issue in Kansas. Exempting businesses from other requirements or requiring them to do inspections to operate in Kansas may address this issue. Second, KDA officials expressed concern business-affiliated inspectors wouldn't be thorough. This is because the inspectors would answer to and be paid by the business they're inspecting.

A risk-based approach could help KDA be more effective with its inspections.

- A NIST official told us jurisdictions must balance their inspection priorities with their available resources. This could mean using a risk-based approach to set inspection priorities. For example, KDA could use data to identify what businesses have the worst price accuracy issues and focus on inspecting them. This wouldn't help KDA increase coverage. But it could help KDA decide how to best use its inspection resources.
- KDA officials told us they already use a risk-based prioritization strategy. That's because they train inspectors to target high-traffic businesses or businesses from which consumers buy many items. They also told us they take a risk-based approach to following up on failed inspections. This is because their policies base the timing of follow-ups on the percentage of mispriced items.
- We don't think KDA's current strategy is as complete or effective as it could be. KDA's strategy may have risk-based elements, but KDA hasn't fully implemented those elements. For example, we found inspectors don't follow the risk-based follow-up schedule in KDA policy. KDA officials also told us software limitations impair their ability to do data analysis. This means KDA can't easily use data to guide its inspection priorities (e.g., to identify the businesses with the most overcharges). As a result, we don't think KDA has a fully implemented or fully formed risk-based inspection strategy.

Doing more price verification inspections would take additional funding or require KDA to do fewer scale or package inspections.

- We worked with KDA officials and reviewed program data to estimate the cost of more price verification inspections if KDA continued doing inspections according to their current policies and processes. Readers should be aware these are rough estimates. They capture only the estimated staff costs of more inspections. They don't account for other costs, such as equipment costs. Actual costs could vary significantly, especially if inspectors have to travel more.
- We estimated KDA would need 2 to 4 more FTEs to inspect 25% of all retail businesses in Kansas annually (about 2,500 inspections). This would cost between about \$130,000 and \$240,000 per year. This doesn't include the costs of following up with businesses that fail, though. KDA would need to hire even more staff to continue doing follow-ups. Or it would have to de-prioritize them to focus on inspecting more unique businesses.
- We estimated KDA would need up to about 20 more FTEs to inspect all retail businesses in Kansas annually (about 10,000 inspections). This would cost as much as \$1.2 million per year. This also wouldn't include the cost of any follow-ups.

- KDA could also do more price verification inspections if it did fewer scale or package inspections. But this could increase problems with scale and package accuracy in Kansas. KDA officials were especially concerned scale accuracy could get worse. They told us their scale inspections have failure rates like price verification inspections.
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Conclusion

Currently, price verification inspections provide Kansas consumers with very little assurance that the prices they pay for various items are accurate. Inspection coverage is spotty and disproportionate, and roughly 95% of businesses aren't inspected in a given year. Moreover, the Department of Agriculture pursues relatively few legal actions or meaningful penalties, which results in some businesses failing inspections over and over. However, that doesn't necessarily mean prices are wrong in significant ways. The limited number of inspections performed the past few fiscal years did not show egregious price accuracy problems. However, that doesn't mean that Kansas consumers can be certain that the price they pay at the register is always accurate. Because other states don't devote many resources to this function, legislators and the department should weigh the costs of any process enhancements against the value added to consumer protection.

Recommendations

1. KDA should use program data to develop a more effective inspection strategy instead of having scale inspections direct their inspection strategy. For example, KDA could focus on inspecting businesses that meet certain criteria, such as the severity of pricing issues, location, or type of business. KDA's strategy should account for how many follow-up inspections KDA can do.
 2. KDA should do a staffing analysis to estimate the cost of implementing its desired inspection strategy. KDA should use that analysis to inform its future budget requests and discussions with the Legislature.
 3. KDA should develop and document a strategy for issuing legal orders timely and consistently instead of issuing them when staff have time. KDA's strategy should clearly identify when KDA will issue legal orders (instead of when it may do so). KDA's strategy should also reflect the extent to which KDA has sufficient resources to issue legal orders. KDA management should then regularly review program data to ensure staff issue legal orders in accordance with KDA's strategy.
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Agency Response

On November 6, 2020 we provided the draft audit report to the Kansas Department of Agriculture. Its response is below. Agency officials generally agreed with our findings and conclusions. But they provided additional information to further explain or add context to some of our findings. We reviewed the information agency officials provided and made minor changes to one finding regarding when KDA issues legal orders. The information KDA provided did not significantly affect our findings, conclusions, and recommendations.

Kansas Department of Agriculture's Response

Mr. Stowe:

The Kansas Department of Agriculture ("KDA") appreciates the opportunity to respond to the draft report by the Legislative Division of Post Audit evaluating the Price Verification Inspection Process of KDA's Weights and Measures Program (the "Program"). The audit will provide valuable information about available resources and other issues affecting Program, Kansas businesses, and point-of-sale systems in Kansas.

Many of the audit observations and recommendations will be helpful to us as we consider what needs to be done to make this an efficient, effective, and consistent regulatory program. We appreciate the professionalism of the auditors and their contributions to this effort. The team from LPA dedicated many hours to learning how Program operates and to answering questions from KDA regarding this process.

KDA's line item responses to some of the findings in the audit report can be found in the attached "Comments and Clarifications to Report Number: R-20-015". KDA's direct responses to LPA's recommendations are summarized in the following bulleted list:

Kansas Department of Agriculture Response to LPA Recommendations

1. KDA should use program data to develop a more effective inspection strategy instead of having scale inspections direct their inspection strategy. For example, KDA could focus on inspecting businesses that meet certain criteria, such as the severity of pricing issues, location, or type of business. KDA's strategy should account for how many follow-up inspections KDA can do.
 - Agency Response: KDA welcomes recommendations to improve the risk-based inspection strategy currently in practice. Program will evaluate price verification inspection data to determine whether it can create new and/or modify existing guidance documentation regarding the selection of businesses for inspection or make any needed adjustments to the follow-

up inspection schedule. Program will also use program data to evaluate its current inspection strategy in regard to all types of inspections. Inspection data, consumer harm, budget, staffing constraints, geographic location of inspector, program efficiency, and statutory responsibilities will need to be taken into consideration. Areas identified as needing improvement will be addressed with realistic modifications that stay within the program budget and current mandates of law.

2. KDA should do a staffing analysis to estimate the cost of implementing its desired inspection strategy. KDA should use that analysis to inform its future budget requests and discussions with the Legislature.
 - Agency Response: KDA is in the process of outlining the staffing and resources required for its desired inspection strategy. The agency will form proposals that reflect different levels of increased coverage and estimate the cost associated with each. In addition, the agency plans to explore funding options, outside of State General Funds, for increasing revenue in order to support the implementation of its desired inspection strategy.
3. KDA should develop and document a strategy for issuing legal orders timely and consistently instead of issuing them when staff have time. KDA's strategy should clearly identify when KDA will issue legal orders (instead of when it may do so). KDA's strategy should also reflect the extent to which KDA has sufficient resources to issue legal orders. KDA management should then regularly review program data to ensure staff issue legal orders in accordance with KDA's strategy.
 - KDA will explore efficient ways to improve the process of issuing legal orders. Program shall develop a strategy based on its current resources for doing so and create a guidance document for the legal order process.

Again, we are grateful to the Legislative Post Auditors for their research and analysis. We appreciate the opportunity to provide comments on the findings of the audit. The Weights and Measures Program will continue to support Kansas businesses, the integrity of point-of-sales systems throughout the state, and to uphold its obligations to the State of Kansas.

Sincerely,

Mike Beam
Secretary of Agriculture

Comments and Clarifications to Report Number: R-20-015

Section beginning with “KDA’s inspections only covered a small percentage of all Kansas retail...”, Paragraph 2:

There is a significant omission in this section, which KDA failed to include during the data collection phase of the audit. While Program shared some employee data with LPA, that data did not include which area of the state each inspector covered and when each inspector joined the program. Over the FY2018 to FY2020 period audited, the program experienced vacancies in four of the six inspector positions.

- The Southeast Kansas position was vacant for the majority of FY2018. An inspector was hired for the Southeast area in May 2018.
- The Northeast Kansas position was vacant for the majority of FY2019 and FY2020. An inspector was hired for the Northeast area in December 2019.
- The North Central Kansas position was vacant for the first half of FY2020. The North Central inspection area was combined with the Northeast inspection area. The inspector hired in December 2019 now covers both inspection areas.
- The Northwest Kansas position was vacant since late FY2019. The position is still vacant.

In addition, the majority of the counties LPA specified as having no inspections are unique in that they are near more highly populated counties and many of the residents do their shopping in those more populated areas. Consequently, our inspectors focused on those areas that attract residents from other counties. This situation also applies to paragraph 3.

Section beginning with “KDA’s inspections only covered a small percentage of all Kansas retail...”, Paragraph 3:

KDA believes that the sentence, “The program prioritizes scale inspections” is incomplete. The program prioritizes scale inspections unless a pricing complaint is received or the inspection is a follow-up to a previously failed price verification inspection.

The program considers consumer harm, staffing constraints, and other factors when prioritizing inspections. Since inaccurate scales have the potential to do more economic harm, new scale installations and routine scale inspections are a higher priority. In addition, because of the relatively significant amount of resources invested in the program’s large-scale inspection trucks, Program, along with KDA administration, have an expectation that the trucks will be utilized year-round, within reason. However, in many instances, the price verification complaint or follow-up price verification inspection is used to determine the inspector’s itinerary.

Complaints are considered a higher priority and will always come before routine or follow-up inspections.

Section that reads, “KDA didn’t conduct timely follow ups on about 75% of failed inspections”:

There are several occasions that may have an effect on the timeliness of follow-up inspections. As mentioned previously in the comments, addressing page 6, paragraph 2 of the report, vacant inspector positions have affected the inspection coverage for several areas in Kansas. There are several instances where follow-up inspections were not conducted according to our follow-up schedule because of a vacant inspector position.

The timeliness of some follow-up inspections is also affected by pending legal orders. The inspectors are instructed not to return to the business for a follow-up inspection until the summary order or civil penalty order is closed by the legal department.

The apparent timeliness of follow-up inspections selected for review during this audit was also affected by policies regarding compliance, as set by agency leadership from 2014 to 2018 (see comment under “Page 11” below).

In some cases, follow-up inspections could not be conducted for stores that have permanently closed. For example, both Shopko and Sears had store locations that failed price verification inspections and were scheduled for follow-up inspections. Both retail chains closed their stores in 2019.

Section that reads, “KDA issued legal orders later than it could have for businesses that failed inspections”:

Program agrees that prior to 2015 the criteria detailing when “legal action” is enacted by KDA was not established. Criteria was developed in 2015 and was further defined in 2018 to be more consistent.

Section that reads, “KDA’s fines were small and KDA frequently reduced them further”:

From 2014 to 2018 the KDA Secretary of Agriculture had a policy of education and cooperation to achieve compliance. Program was encouraged to continue follow up inspections to help businesses work towards compliance.

When civil penalties were assessed, Program was encouraged to settle for a lesser amount when the business developed a plan and made strides toward compliance. For example, the fines levied against Dollar General were reduced because they were able to demonstrate marked improvement with regard to pricing accuracy. They also participated in multiple Price Verification seminars administered by Sherry Turvey to educate their staff about the price verification inspection process and some of the more common issues that affect pricing accuracy. These seminars were

provided at a cost of \$250 per session, so in effect there were additional costs to achieve compliance.

Since September of 2019, Dollar General has passed 54 of 92 inspections and has achieved an accuracy rate of 96.8% overall, an improvement of nearly 5%. Dollar General's improved accuracy rate exceeds the overall average of all price verification inspections conducted since September 2019. Dollar General continues to work with KDA toward improving compliance by requesting price verification seminars for new management. It is their goal to have 24 trainings each year.

Section that reads, "Inspection Coverage in Other States":

While KDA agrees with LPA's assessment that Program does not currently place PV inspections as its top priority, in this section, where the success rates of neighboring states are highlighted, we felt it important to note that Kansas is one of the few states with a W&M Program that is proactive in conducting PV Inspections. Most states conduct inspections in relation to consumer complaints alone. Program also counts errors that would undercharge the consumer when determining pricing accuracy, which isn't clearly stated in this section of the report.

Section that reads, "Increasing Inspection Coverage in Kansas":

While K.S.A. 83-206 does allow delegation of certain responsibilities to public or private entities, currently there are no city or county Weights & Measures programs to delegate the responsibility of PV inspections, as indicated in this report. KDA has no plans at this time and has received no mandate from the legislature to pursue legislation which would require a city or county to create an entity to administer these inspections. If any municipalities would approach KDA with interest in this, KDA would welcome their participation and assist in the development and training of their staff.

Section that reads, "A risk-based approach could help KDA be more effective with its inspections":

KDA understands that LPA is recommending a more robust risk-based approach to administer the PV inspection program. However, KDA wants to ensure that the analysis in this section still acknowledges Program's existing prioritization strategy in its current form, so that there is not an appearance of inadequacy with regard to policies and training materials. Our current written prioritization strategy is focused on conducting initial inspections, inspecting pricing complaints, and conducting follow up inspections. While less aggressive than the approach LPA has recommended, KDA believes this strategy is itself risk-based and further incorporates the tenants of a risk-based approach by instructing inspectors to focus on stores which pose the greatest threat to consumers through their pricing model and established shopping practices (this can include stores where customers purchase many items at once, making it difficult for the consumer to determine if they have been charged accurately). KDA is prepared to work toward implementing its current strategy more effectively in the immediate future and to conduct further

evaluations of its program data to develop an inspection strategy that addresses the concerns outlined within this audit, but wanted to make sure the current process was detailed within this report.

Figure 6:

This graph shows data from 2014. As explained above in the page 10 comments, the plan to accelerate legal orders was not created until 2015.

Response to LPA Recommendations

1. KDA welcomes recommendations to improve the risk-based inspection strategy currently in practice. Program will evaluate price verification inspection data to determine whether it can create new and/or modify existing guidance documentation regarding the selection of businesses for inspection or make any needed adjustments to the follow-up inspection schedule. Program will also use program data to evaluate its current inspection strategy in regard to all types of inspections. Inspection data, consumer harm, budget, staffing constraints, geographic location of inspector, program efficiency, and statutory responsibilities will need to be taken into consideration. Areas identified as needing improvement will be addressed with realistic modifications that stay within the program budget and current mandates of law.
2. KDA is in the process of outlining the staffing and resources required for its desired inspection strategy. The agency will form proposals that reflect different levels of increased coverage and estimate the cost associated with each. In addition, the agency plans to explore funding options, outside of State General Funds, for increasing revenue in order to support the implementation of its desired inspection strategy.
3. KDA will explore efficient ways to improve the process of issuing legal orders. Program shall develop a strategy based on its current resources for doing so and create a guidance document for the legal order process.

Appendix A – Cited References

This appendix lists the major publications we relied on for this report.

1. [Department of Agriculture: Evaluating the Division of Weights and Measures' Price Verification Process \(Limited Scope\)](#) (March, 2019). *Kansas Legislative Post Audit*.

2. [National Institute of Standards and Technology Handbook 130, 2020 Edition](#)
(November, 2019). *National Institute of Standards and Technology*.