

Regulatory Analysis Form

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(1) Agency
Department of Agriculture

INDEPENDENT REGULATORY
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)
2-111

Harbison

IRRC Number: 1990

(3) Short Title

Weights, Measures and Standards

(4) PA Code Cite
70 Pa. Code Chapters 1-10, 21, 35
and 39

(5) Agency Contacts & Telephone Numbers
Primary Contact: Charles Bruckner, 717-787-9089
Secondary Contact: Paul Calvanelli, 717-787-9089

(6) Type of Rulemaking (check one)
Proposed Rulemaking
Final Order Adopting Regulation XXXX
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification
Attached?

No XXXX
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This regulation implements the Consolidated Weights and Measures Act (3 Pa.C.S. §§ 4101-4194). In summary, the regulation: a) Defines numerous terms; b) Sets forth standards for "Certified Examiners of Weights and Measures"; c) Describes inspection requirements and procedures for commercially-used Uniform Product Code ("UPC") scanning systems and Price Look Up ("PLU") devices; d) Establishes procedures for the registration of sellers, installers and repairers of commercially-used weighing and measuring devices; e) Requires the reporting of results of inspections of such devices; f) Sets minimum training standards for inspectors; g) Establishes standards and requirements for public weighmasters; h) Sets standards pursuant to which the Pennsylvania Department of Agriculture ("PDA") will approve various types of weighing and measuring devices; and i) Revises or rescinds current regulations and guidelines to make them consistent with the Consolidated Weights and Measures Act.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The consolidated Weights and Measures Act (act of December 18, 1996, P.L. 1028, No. 155)(3 Pa.C.S. §§ 4101-4194) is the statutory authority upon which PDA offers the regulation.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Businesses and consumers will benefit from this regulation. The ultimate effect of this regulation should be to make commercial weights and measures more accurate Statewide. This should result in fewer consumers being overcharged and fewer retailers undercharging with respect to items sold by weight, measure or count, or items that pass through a UPC scanning system or PLU device on the way to the consumer.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Many of the regulation's provisions are required by the Consolidated Weights and Measures Act.

In addition, PDA has an urgent need to field a corps of trained, competent, certified inspectors to assist in meeting the extensive inspection responsibilities imposed by the Consolidated Weights and Measures Act. The regulation will establish needed training and certification requirements for these various inspectors. In addition, the regulation will help make weights and measures more accurate, and will thereby protect consumers and businesses involved in commercial transactions that are based upon some weight, measure or count of the item being sold. Nonregulation would result in PDA failing to meet the requirements of the Consolidated Weights and Measures Act, and would allow greater inaccuracy and inconsistency in commercial weighing and measuring than were the regulation promulgated.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulation will affect a large number of persons and businesses.

Any business that makes commercial use of a weighing and measuring device in the Commonwealth would be affected by this regulation. The affected businesses include those dealing in the commercial sale of solid or liquid fuel, retail or wholesale stores using UPC scanning systems or PLU devices and any business that sells products by weight, measure or count.

Persons who could become certified under the regulation and charge a fee for their inspection services will benefit from this regulation.

Consumers are the ultimate beneficiaries of this regulation. The regulation will bring greater accuracy to commercial weights and measures, and will help ensure consumers get full value for their money when purchasing items by weight, measure or count, or when their purchases are totaled on a UPC scanning system or PLU device. In summary, the regulation will result in fewer errors and greater accuracy in commercial transactions.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The regulation is not expected to have an adverse impact upon any group. As stated in the answer to Question No. 13, above, consumers and businesses that use weighing and measuring devices in commercial transactions will benefit from the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation will require that owners of commercially used weighing and measuring devices register these devices with PDA.

Most persons who sell, install, repair or service commercially used weighing and measuring devices will be required to register with the Department.

The regulation also allows persons who wish to become "Certified Examiners of Weights and Measures" to follow specific standards and otherwise meet the requirements for certification by PDA.

Similarly, the regulation will provide standards and procedures pursuant to which a person may become a "certified UPC/PLU inspector."

State inspectors, county sealers or city sealers conducting weights and measures inspections under authority of the Consolidated Weights and Measures Act will be required to comply with the inspection standards and reporting procedures set forth in the regulation.

(16) Describe the communications with and input from the public in development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was developed, in part, with the assistance of groups representing a cross-section of affected interests. PDA organized several government/industry/public work groups to assist in the drafting of the proposed regulations. The proposed regulation embodied many concepts supported by these groups.

PDA also circulated a draft of the proposed regulation to approximately 150 interested persons for an informal comment period prior to beginning the formal promulgation process. Several of these persons offered comments, and a number of these comments resulted in revisions to the proposed regulation.

Following publication of the proposed regulation in the *Pennsylvania Bulletin*, PDA considered numerous comments received from the public and Legislative sectors. Many of these comments resulted in substantive revisions appearing in the final-form regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation will not impose any costs on consumers.

The regulation might result in some cost to those persons who seek to become "Certified Examiners of Weights and Measures" or "certified UPC/PLU inspectors" but have not taken the training the regulations will require.

The regulation will cost a business that elects to hire a CEWM to perform an inspection

whatever fee that CEWM charges. Similarly, a business that hires a certified UPC/PLU inspector working as part of a private certification program to conduct an inspection of its UPC scanning systems or PLU devices might be assessed a fee for this service. Since the number of businesses that will use these inspection alternatives is unclear, and inspection fee amounts are at the discretion of the inspector, PDA cannot offer a realistic estimate of the total costs involved.

Although PDA intends to offer some initial training for free or at cost, its ultimate intention is to allow industry groups or for-profit training providers to undertake a greater role in providing training.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation will not impose appreciable costs on local governments. Although a county or city that agrees to perform required inspections pursuant to a memorandum of understanding with PDA must ensure that its county sealers or city sealers are adequately trained and certified to inspect the types of weights and measures they intend to inspect, this training is not expected to be costly. PDA will offer training for free or at cost to the extent possible.

In addition, a county or city may recoup the costs that are incidental to inspections conducted pursuant to a memorandum of understanding with PDA by charging a fee to the entities whose weighing and measuring devices it inspects.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

It is expected PDA will require additional personnel to assist it in administering the certification, registration, inspection and enforcement provisions of the Act. PDA estimates it will need 2 additional office personnel, at an estimated annual total cost of \$100,000 per year, to meet this obligation. PDA may also require additional field personnel, but is not certain whether this will be necessary. This need for additional field personnel will depend on the extent to which county sealers, city sealers, CEWMs and private certification programs perform inspections PDA would otherwise be required to perform under the Act.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated						
Local Government						
State Government						
Total Savings						

COSTS:						
Regulated						
Local Government						
State Government	100,000	103,000	106,000	109,000	112,500	115,900
Total Costs	100,000	103,000	106,000	109,000	112,500	115,900
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The Department will require at least 2 additional office personnel to administer the regulation. It is estimated these 2 personnel will cost a total of \$100,000 in the first year, with small increases in each of the following years.

As stated in response to Question No. 19, the regulation may ultimately require PDA to hire more field personnel. PDA cannot offer a realistic estimate of those costs at this point, though.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (95-96)	FY -2 (96-97)	FY -1 (97-98)	Current FY (98-99)
Weights and Measures Division	\$1,263,852	\$1,196,052	\$1,255,689	\$1,192,100

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Although the savings to consumers and retailers that are expected to result from the promulgation of this regulation cannot readily be quantified, it is believed these savings will far exceed any costs resulting from this regulation. As stated, the costs are expected to be low, and it is the Act, rather than the regulation, that requires these costs.

The modern marketplace should be premised upon "truth in labeling". It is anticipated that the consumer confidence that will arise from the implementation of the Act and the regulation will more than offset any cost the proposed regulation would entail.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered, in light of the fact that regulations are specifically required under the Consolidated Weights and Measures Act.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered in the development of this regulation.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The regulation does not establish standards or requirements that are more restrictive than existing Federal standards. In fact, the regulation makes the existing Federal standards of weights and measure – the NIST standards of the U.S. Department of Commerce – the standards of PDA.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation is similar to the regulations of other states in most respects. One difference, though, is the regulation's inclusion of UPC scanning systems and PLU devices under the definition of "weights and measures". These systems and devices do not weigh or measure anything. The inclusion of these systems and devices is the product of the Consolidated Weights and Measures Act, rather than the regulation.

The regulation will not put Pennsylvania at a competitive disadvantage with other states. The regulation will benefit the business community and consumers alike.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will delete the regulations at 70 Pa. Code Chapters 1, 3, 35 and 39, and amend the regulations at 70 Pa. Code Chapter 21. The regulation will add Chapters 2 and 4-10 to 70 Pa. Code.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No further public hearings or informational meetings will be scheduled, although the Independent Regulatory Review Commission will conduct a public meeting at which it will consider this final-form regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will establish new reporting and record keeping requirements. The required forms are in the process of being developed, but will include the following:

- (a) Application for CEWM Certificate.
- (b) CEWM Certificate.
- (c) Application for UPC/PLU Inspector's Certificate.
- (d) Seller/Installer/Repairer Registration Form.
- (e) Seller/Installer/Repairer Registration Card.
- (f) Application for a Public Weighmaster's License.
- (g) Public Weighmaster's License.
- (h) Application for Review of Device Type.
- (i) Certificate of Approval of Device Type.

PDA will attempt to develop multi-use forms, where possible. For example, PDA intends to use the same form for the certificates referenced at (a), (c), (e) and (g).

The regulation also requires the preparation and filing of an inspection report form with respect to inspections of commercial weighing and measuring devices. These forms shall only require the minimum information consistent with PDA's discharge of its duties under the Act.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Of the groups identified in the question, "small businesses" are most likely to be affected by this regulation. Although the regulation does not contain special provisions addressing small businesses, PDA is aware that many small businesses use weighing and measuring devices in their operations, and will have responsibilities under this regulation. In drafting the regulation PDA has made an effort to impose as few burdens on small businesses as possible. As stated, the overall effect of this regulation on small businesses is expected to be positive.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon publication in the *Pennsylvania Bulletin* in accordance with the requirements of the Regulatory Review Act. PDA intends this regulation to take effect at the earliest date possible.

(31) Provide the schedule for continual review of the regulation.

The efficacy of this regulation will be reviewed on an ongoing basis. In addition, PDA's Bureau of Ride and Measurement Standards reviews the regulations it administers on an annual basis. Should any requirements imposed by this regulation prove unnecessary or overly restrictive, PDA will act promptly to revise the regulation.

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NOTICE OF FINAL RULEMAKING
WEIGHTS, MEASURES AND STANDARDS
70 PA. CODE CHAPTERS 1-10, 21, 35 and 39

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DEPUTY ATTORNEY GENERAL

DATE OF APPROVAL

If applicable
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of a document issued, prescribed or promulgated by:

Department of Agriculture

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-111

DATE OF ADOPTION:

BY: Samuel E. Hayes, Jr.
SAMUEL E. HAYES, JR.

TITLE: Secretary of Agriculture

EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agencies.

BY: _____

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Some inapplicable title)

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eral approval or objection within 30
days after submission.

NOTICE OF FINAL RULEMAKING
WEIGHTS, MEASURES AND STANDARDS
70 PA. CODE CHAPTERS 1-10, 21, 35 and 39

DEPARTMENT OF AGRICULTURE
[70 PA. CODE CHS. 1-10, 21, 35 AND 39]
Weights, Measures and Standards

The Department of Agriculture (Department) hereby establishes regulations required or authorized under the Consolidated Weights and Measures Act (3 Pa.C.S. §§ 4101-4194)(Act). This regulatory objective will be accomplished by **deleting** Chapters 1, 3, 35 and 39, **amending** Chapter 21 and **adding** Chapters 2 and 4-10 to read as set forth in Annex A.

The Department has the power and authority to adopt these regulations. This authority includes:

- (1) General authority to regulate as necessary for the performance of its responsibilities under §§ 4110 and 4190 of the Act (relating to specific powers and duties of the Department; regulations; and rules and regulations).
- (2) Authority to require, through regulation, the registration of sellers, installers, servicers and repairers of commercially-used weighing and measuring devices under § 4113 of the Act (relating to registration of sellers, installers and repairers of weighing and measuring devices).
- (3) Authority to require, through regulation, the registration and reporting of testing of commercially-used weighing and measuring devices under § 4114 of the Act (relating to registration and report of inspection of weighing and measuring devices used for commercial purposes).
- (4) The duty to establish, by regulation, minimum training standards for State inspectors and county and city sealers of weights and measures under § 4115 of the Act (relating to training program).
- (5) Authority to regulate the method of sale of commodities in this Commonwealth under § 4127(c) of the Act (relating to method of sale of commodities).
- (6) The duty to establish, by regulation, reasonable variations in weight, measure or count with respect to commodities under § 4128(b) of the Act (relating to packages; declarations of quantity and origin; variations; exemptions).
- (7) General Authority to regulate with respect to public weighmasters under §§ 4150 and 4167 of the Act (relating to enforcement and regulations; and rules and regulations).
- (8) Authority to regulate the weighing and measuring device types which must be reviewed and approved by the Department before being used in commerce in this Commonwealth under §§ 4170 and 4176 of the Act (relating to approval of types of weights and measures and weighing and measuring devices; and rules and regulations).
- (9) Authority to regulate with respect to domestic fuel oil under § 4183(b) of the Act (relating to enforcement of chapter, rules and regulations).

Need for the Regulations

The Act assigns the Department primary responsibility for conducting periodic inspections of every commercially used weighing and measuring device in the Commonwealth. It also allows some of this inspection responsibility to be assumed by county sealers or city sealers (if working under a memorandum of understanding with the Department), certified examiners of weights and measures (with respect to specific designated types of weighing and measuring devices) and private certification programs (with respect to Universal Product Code scanning systems and Price Look Up devices). The regulations establish minimum training and certification requirements for persons conducting inspections under authority of the Act.

A number of provisions in the regulations are specifically required by the Act. These provisions are referenced above in this Preamble, under the "Authority" heading.

The regulations should ultimately make the weighing or measuring devices in commercial use in the Commonwealth more reliable, and help ensure that a consumer gets the full measure of any product the consumer purchases by weight, measure or count, or which is passed through a Universal Product Code (UPC) scanning system or Price Look Up (PLU) device.

The regulations should benefit the Commonwealth's business community by helping to lessen underpricing or underweighing of products and the monetary losses associated with the underpricing or underweighing. In addition, the regulations may boost consumer confidence

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Comments

Notice of Proposed Rulemaking was published at 28 *Pennsylvania Bulletin* 5109 (October 10, 1998), and provided for a 30-day public comment period. The Legislative Reference Bureau published non-substantive corrections to the Notice of Proposed Rulemaking at 28 *Pennsylvania Bulletin* 5244 (October 17, 1998). These corrections related to the renumbering of sections, and did not substantively alter the proposed regulations or affect the comment period.

Comments were received from the House Agriculture and Rural Affairs Committee (House Committee), the Senate Agriculture and Rural Affairs Committee (Senate Committee), Representative Italo Cappabianca (Minority Chairman of the House Committee), Senator Roger Madigan (the prime sponsor of the Act), the Independent Regulatory Review Commission (IRRC), the Pennsylvania Association of Weights and Measures (PAWM), the Scanning Certification Program (SCP), PennAg Industries

Association (PAIA), the Bitterman Scale Company (BSC), the Precision Weight Scale Company, Inc. (PWSC), the Pennsylvania Propane Gas Association (PPGA) and others.

Comment: PAIA found the proposed regulations satisfactory and agreed the proper training of examiners of weights and measures will benefit all Pennsylvanians.

Response: The Department accepts this comment and believes further elaboration is not required.

Comment: A commentator offered the general observation that the proposed regulation does not address the subject of package inspections. The commentator emphasized the importance of random package inspections, and noted the high number of prosecutions resulting from package inspections in the past.

Response: The Department agrees that package inspections are an important component of the enforcement role prescribed for the Department under the Act. Section 4117 of the Act makes it the responsibility of the Department (or any entity to which it transfers enforcement responsibilities pursuant to a memorandum of understanding under § 4121 of the Act) to conduct package inspections. Although the Act requires these package inspections be conducted "from time to time", it is the intention of the Department to conduct regular random package inspections and to require the same of the entities to which it transfers enforcement responsibilities. The Department believes the language of the Act relating to package inspections is self-executing, and need not be addressed in formal regulations.

Comment: BSC offered the comment that the proposed regulation would allow persons conducting weights and measures inspections under the Act to interpret the procedures set forth in National Institute of Standards and Technology (NIST) Handbook 44 such that there might be inconsistency in enforcement. The commentator believes the proposed regulation is too subjective in this regard.

Response: The Department is satisfied the standards, tolerances and procedures set forth in NIST Handbook 44 will facilitate uniform interpretation and application. In addition, the Department notes that although § 4110(b) of the Act would allow the Department to adopt procedures that vary from those prescribed by NIST Handbook 44, the language of that subsection also suggests the NIST Handbook 44 standards would be adequate.

Comment: PWSC asked whether a CEWM can take a commercially used weighing and measuring device out of service if the CEWM finds the device to be inaccurate during the course of an inspection authorized under § 4112(b) of the Act.

Response: There is no provision in the Act or the final-form regulation to allow a CEWM to reject an inaccurate commercially used weighing and measuring device. Section 4126 of the Act allows State inspectors, county sealers or city sealers to take this action.

The comment underscored the need for some regulatory requirement that a CEWM promptly report inaccurate commercially used weighing and measuring devices to the Department. In response, the Department has added a new subsection § 4.13(e) to the final-form regulation, which requires a CEWM to promptly report inaccurate

commercially used weighing and measuring devices to the Department. The Department will either reject the device in accordance with the Act or advise the appropriate county sealer or city sealer to do the same.

Comment: PPGA suggested the final-form regulation reflect that the Department is required to provide any inspection required under the Act free of charge. An owner or user of a commercial weighing and measuring device should be made aware that he or she need not incur any cost in obtaining the inspections required under the Act.

Response: The Act does not authorize the Department to charge a fee for inspections required under the Act. A county sealer or city sealer may charge a fee for inspections under its general authority to make provisions for defraying expenses that are incidental to carrying out official duties under the Act. This authority is found in § 4123(a)(3) of the Act. In a county or city where the Department has transferred inspection responsibilities to the county or city pursuant to a memorandum of understanding, persons within that county or city will not have the option to choose between a free inspection by a State inspector or an inspection conducted by a county sealer or city sealer for a fee. In that instance, the county sealer or city sealer shall conduct the inspection.

Section 4.3(b) of the final-form regulation specifies that a CEWM may charge a fee for inspection services. Section 5.5(c) of the final-form regulation clarifies that certified UPC/PLU inspectors (including certified UPC/PLU inspectors who are State inspectors, county sealers or city sealers) may not charge a fee for inspection services unless they are county sealers or city sealers, or are part of a private certification program. The Department believes the final-form regulation is sufficiently specific as to the circumstances under which a fee may be charged.

Comment: Representative Cappabianca noted the Department's use of the undefined term "commercially used" in proposed §§ 4.3 and 5.1 (relating to authority of a CEWM and purpose, respectively) and at other locations in the proposed regulation, and suggested this term be defined in § 2.1 of the final-form regulation (relating to definitions). IRRRC also recommended that this term be defined. PWSC repeated this comment, and asked whether weighing and measuring devices used for "business to business" transactions (scales used to "...weigh product for the purpose of transferring ownership of the product from one business to another") would be included within the definition of "commercially used". IRRRC recommended that the term "commercial weighing device" be defined in § 2.1 of the final-form regulation.

Response: The Department accepts these comments, and has included a definition of "commercially used weighing and measuring device" in § 2.1 of the final-form regulation. This definition derives from § 4112(a) of the Act.

Comment: IRRRC suggested the definition of the term "UPC scanning system" be reworked in the final-form regulation. IRRRC noted that the term "scanning system" is separately defined, and suggested that by rewriting this definition to address UPC technologies the Department might obviate the need to separately define "UPC scanning system".

Response: The Department has revised the definition of “UPC scanning system” in § 2.1 of the final-form regulation. The Department declines to revise the definition of “scanning system” to include this term, since the terms “UPC scanning system” and “PLU device” appear in § 4112 of the Act.

Comment: BSC asked whether “event counters” are included within the definition of “weights and measures” for purposes of the final-form regulation.

Response: If an “event counter” is a turnstile or similar device that counts the number of persons passing through it, such a device would not be a commercially used weighing and measuring device unless the count recorded by that device is used in some commercial transaction.

Comment: BSC reviewed proposed Chapter 4 (relating to certified examiners of weights and measures) and asked how it will be determined whether a CEWM is performing inspections correctly. The commentator opined that there appears to be a presumption against the CEWM, and that the proposed regulation did not adequately address the possibility that a less-than-honest owner of a commercially used weighing and measuring device might alter that device after it had been inspected by a CEWM.

Response: The commentator’s point is well taken. The Department is aware that a CEWM might correctly perform a required inspection of a commercially used weighing and measuring device and that – whether by design or accident – the device might be rendered inaccurate shortly after the CEWM completes the inspection. The Department attempts to take this into account in § 4.14(c) of the final-form regulation (relating to inspection and testing by the department). It is not the intention of the Department to revoke or suspend the certification of a CEWM in the absence of clear evidence the action is warranted.

Comment: BSC listed the various costs it expected to incur in training and equipping a CEWM.

Response: A CEWM may pass training costs along to the owners or users of the commercially used weighing and measuring devices it inspects. If a person feels the costs of becoming a CEWM or maintaining CEWM status are too high, that person need not become or remain a CEWM. CEWM status is completely voluntary.

Comment: BSC asked whether the Department intends to establish any form of interstate reciprocity to allow an out-of-state entity to act as a CEWM.

Response: The answer to this question is “no.” The Department will not accept the inspection report of an individual who has not received the required training and who has not followed the certification procedure set forth in Chapter 4 of the final-form regulation.

Comment: BSC recommended proposed § 4.3 (relating to authority of a CEWM) be revised to add several types of weighing and measuring devices that were not identified in that section as being types which a CEWM is authorized to inspect.

Response: The Department declines to implement this recommendation, since the types of weighing and measuring devices that had been set forth in proposed § 4.3 are

identical to the types set forth in § 4112(b) of the Act. The Department may only accept an inspection report from a CEWM with respect to a type of weighing and measuring device listed in § 4112(b) of the Act. The Department deleted these types of weighing and measuring devices from § 4.3 of the final-form regulation, since they are also listed in § 4.4 of the final-form regulation (relating to categories and types of weighing and measuring devices which a CEWM may inspect).

Comment: The Senate Committee recommended proposed § 4.3(a) (relating to authority of a CEWM) be revised to specifically state that it is acceptable under the Act for a CEWM to conduct an inspection of weighing and measuring devices which the CEWM owns or operates, or which are owned or operated by the CEWM's employer.

Response: The Department accepts the Senate Committee's recommendation, and has revised § 4.3 of the final-form regulation accordingly.

Comment: PPGA noted that proposed § 4.3(b) would allow a CEWM to set the fees for that CEWM's inspection services, and expressed concern that these fees should be more closely-regulated.

Response: The Department will allow a CEWM to charge whatever fees the market for the CEWM's services will bear. The prospect that a CEWM could price himself or herself out-of-business should act to temper the fees a CEWM will charge. It should also be considered that the Department is ultimately obligated to provide any inspection required under the Act free of charge (except where a county or city has undertaken inspection responsibilities pursuant to a memorandum of understanding with the Department – in which case the county or city may charge a fee that reflects the costs that are incidental to the performance of its contractual duties). For this reason, a business entity need hire a CEWM to perform a required inspection only when considerations of time, convenience or other reasons militate in favor of paying a CEWM to perform a required inspection.

Comment: PWSC reviewed the various categories of commercially used weighing and measuring devices with respect to which a person can be certified as a CEWM, and asked how the Department intends to address scales that weigh items *over* 1,000 pounds and vehicle scales. The referenced categories are set forth at § 4.4 of the final-form regulation (relating to categories and types of weighing or measuring devices which a CEWM may inspect).

Response: Section 4.4 of the final-form regulation restates the statutorily-prescribed categories of commercially used weighing and measuring devices with respect to which the Department may accept the inspection report of a CEWM in lieu of conducting the inspection itself. These categories are found in § 4112(b) of the Act. Although the Department agrees with the commentator that it would be of benefit if the Department could accept inspection reports from CEWMs with respect to more types of commercially used weighing and measuring devices than are listed in § 4.4 of the final-form regulation or § 4112(b) of the Act, it is constrained by the Act in this regard. Scales that weigh items over 1,000 pounds would have to be inspected by a State inspector or an authorized county sealer or city sealer.

Comment: PPGA voiced concern regarding the Department's proposed regulation of weighing and measuring devices on liquid petroleum gas meters. Proposed § 4.4(6) makes specific reference to truck-mounted liquid petroleum gas meters. PPGA commented that the proposed regulation would have an adverse economic impact on propane companies and consumers throughout the Commonwealth. PPGA referenced the requirements of Executive Order 1996-1 ("Regulatory Review and Promulgation"), and commented that the Department had not conducted the cost-benefit analysis that Order requires.

Response: The Department does not have the discretion to exclude truck-mounted liquid petroleum gas meters from those commercially used weighing and measuring devices it inspects. The inclusion of truck-mounted liquid petroleum gas meters among those commercially used weighing and measuring devices the Department must inspect is not the product of the proposed regulation, but is the specific requirement of § 4112(b) of the Act. Since this requirement is imposed by statute, any resultant financial impact upon propane companies or the public is the product of the Act, rather than the final-form regulation.

Comment: PPGA also commented that the proposed regulation might result in inspections of truck-mounted liquid petroleum gas meters occurring at intervals of between 14 and 18 months, and that this would result in increased costs to the propane industry "...as the meters tend to malfunction at about 14 months from the last inspection by providing more product to the consumer than identified by the meter." These meters are referenced at proposed § 4.4(6).

Response: Section 4112(b) of the Act requires the inspection of truck-mounted liquid petroleum gas meters at intervals of no more than 12 months. A seller of liquid petroleum gas who suspects the truck-mounted meter used to dispense the gas is allowing purchasers to acquire more gas than they paid for can arrange for the immediate repair of the meter, without the involvement of the Department in the repair process. The inspection requirements set forth in § 6.6 of the final-form regulation would then be applicable to the repaired device.

Comment: PPGA acknowledged the Department's authority to delegate inspection responsibility with respect to truck-mounted liquid petroleum gas meters, but expressed concern that inspections be conducted promptly, efficiently and at a reasonable cost. PPGA also commented that the Department should ensure there are adequate numbers of inspectors to meet the inspection demands. As stated, these meters are referenced at proposed § 4.4(6).

Response: The Department is ultimately required to conduct the referenced inspections at no cost (except where a county or city has undertaken inspection responsibilities pursuant to a memorandum of understanding with the Department – in which case the county or city may charge a fee that reflects the costs that are incidental to the performance of its contractual duties). It will be the Department's responsibility to ensure it has an adequate number of trained, equipped State inspectors, county sealers or city sealers to perform these inspections. The Department will conduct these inspections on schedule and with efficiency. Any CEWM conducting these inspections may charge whatever fee the market will bear.

Comment: IRRC suggested proposed §§ 4.5(1) and 4.6 (relating to certification standards and training courses, respectively) be revised to delete any reference to the Department “approving” NIST training courses. IRRC further commented that under § 4110(a)(4) of the Act, these NIST courses are already considered “approved.”

Response: The Department accepts this suggestion, and has revised the referenced sections accordingly in the final-form regulation.

Comment: PPGA recommended the Department establish procedures pursuant to which it will review the qualifications of a CEWM to ensure that “...a systematic and uniform inspection program is achieved.”

Response: The Department is satisfied that the final-form regulation will result in a uniform CEWM program. Section 4.6 of the final-form regulation requires that a CEWM candidate successfully complete appropriate NIST training. Section 4.13 (relating to reporting procedures for a CEWM) requires a CEWM to report the results of any inspection conducted under authority of a CEWM certificate. Section 4.14 (relating to inspection and testing by the Department) allows for random inspection and testing by the Department to verify that a CEWM is conducting inspections in the proper manner. Section 4.15 (relating to suspension or revocation of certification) allows for the revocation or suspension of a CEWM’s certificate. On balance, the Department is satisfied these provisions, and the other provisions of Chapter 4, are adequate to ensure the CEWM program is systematic and uniform.

Comment: IRRC recommended the Department delete the list of approved NIST courses appearing in proposed § 4.6(b) and either publish the referenced list at intervals in the *Pennsylvania Bulletin* or indicate that a current list may be obtained from the Department.

Response: The Department accepts this recommendation and has revised § 4.6(b) in the final-form regulation to indicate that a current list of NIST courses may be obtained from the Department.

Comment: In the context of its comments with respect to proposed § 4.6, IRRC suggested the final-form regulation contain the standards, technical procedures and reporting procedures referenced in § 4110(a)(1) and (2) of the Act.

Response: Sections 4110(a)(1) and (2) of the Act allow the Department to incorporate into its regulations standards of net weight, measure, count and fill for any commodity in package form, and technical and reporting procedures for State inspectors, county sealers and city sealers to follow in the discharge of their official duties. The Department is satisfied the final-form regulation addresses these topics to the extent necessary. It should also be noted that the current regulations at 70 Pa. Code Chapters 21, 23, 25 and 27 address a number of the standards and procedures referenced in the comment. If, in the administration of this final-form regulation, the Department determines more detailed regulatory provisions on the topics addressed in § 4110(a)(1) and (2) are necessary, the Department will amend the regulations.

Comment: BSC asked whether an application for certification, as described in proposed § 4.8 (relating to applying for certification) could be denied.

Response: An application for a CEWM certificate *can* be denied, as described in § 4.8(c) of the final-form regulation.

Comment: IRRC suggested proposed § 4.10 (relating to expiration of CEWM certificate) be reworded for greater clarity.

Response: The Department accepts this suggestion, and has implemented it in § 4.10 of the final-form regulation.

Comment: BSC commented that proposed § 4.12 (relating to testing and inspection performance standards) does not clearly identify or list the NIST standards it adopts in that section, and suggested these standards be cited in the final-form regulation.

Response: The referenced NIST standards represent an evolving body of knowledge, and are revised and updated on a fairly regular basis. Just as the Department elected to delete the "list of current approved NIST training courses" for CEWMs that had been included in proposed § 4.6(b), the Department is reluctant to include specific NIST standards in § 4.12 of the final-form regulation. As written, § 4.12 of the final-form regulation automatically makes any new or revised NIST standards those of the Department. The Department believes this approach will obviate the need to revise the regulation on a regular basis to address new NIST standards.

Comment: Representative Cappabianca recommended the Department develop a specific inspection report form for CEWMs and require the use of that form in order to make it easier for the Department to handle these required reports and compile information from them. It was further recommended that proposed § 4.13 (relating to reporting procedures for a CEWM) be revised to implement this recommendation. IRRC and BSC offered similar comments, suggesting there be a single, uniform inspection form for use throughout the Commonwealth.

Response: The Department believes it will not have any significant problems in compiling information from inspection report forms. Section 4.13(c) of the final-form regulation adequately sets forth the information an inspection report form must contain. In addition, the Department will provide sample inspection report forms to any requesting party. Although a CEWM might vary the form, the form must still meet the substantive requirements of § 4.13. For these reasons, the Department declines to implement the suggested revision.

Comment: BSC offered the comment that the CEWM inspection report form described in proposed § 4.13 calls for subjective determinations on the part of the person completing the form and has the potential to result in inconsistency in reporting. BSC focused on proposed §§ 4.13(c)(7) and (8), which call for determinations as to defects or deficiencies in a weighing or measuring device and a statement of whether the device is in compliance with NIST performance standards.

Response: NIST performance standards prescribe tolerances for various weighing and measuring devices, and are quite objective in this regard. A weighing and measuring device is either in compliance or it is not. The Department believes the NIST

performance standards and the inspection report form will serve to make inspections less subjective and more consistent. In response to this comment, though, the Department has revised § 4.13(c) of the final-form regulation to add a “comment” space on the inspection report form to allow a CEWM to offer an explanation or clarification of any inspection the CEWM performs.

Comment: BSC suggested proposed § 4.13 be revised to require a CEWM to report such items as: “pit condition, strain load test, repeatability, RFI, bi-directional test, missing security seal, over-capacity use and decreasing load readings...”

Response: The items referenced in this comment can be reported by a CEWM in the “comment” section of the inspection report form.

Comment: Representative Cappabianca reviewed proposed § 4.14 (relating to inspection and testing by the department) and agreed with the Department’s plan to conduct random inspection and testing of a sample of the devices that have been inspected and tested by CEWMs. It was further recommended, though, that the testing described in this section constitute a “statistical sample of each type of device” inspected by CEWMs. These types are listed in § 4.4 of the final-form regulation (relating to categories and types of weighing or measuring devices). IRRC endorsed this comment, as well.

Response: The Department will conduct random inspections of a cross-section of each of the types of weighing and measuring devices described in § 4.4 of the final-form regulation. Section 4.14(a) of the final-form regulation has been revised to make this more clear.

Comment: BSC reviewed proposed § 4.15 (relating to suspension or revocation of certification) and asked whether it was the original intent of the Department to have suspension and revocation matters reviewed by a board comprised of knowledgeable industry representatives, other “neutral” parties and representatives of the Department.

Response: The Department does not intend to establish a board to resolve CEWM revocation, suspension or enforcement issues under the Act.

Comment: In the course of a conversation with one of the commentators, the commentator suggested it would be useful if the Department had some mechanism by which to suspend or revoke the authority of a CEWM or a certified UPC/PLU inspector on an emergency basis.

Response: The Department rejects this informal comment. The statute at 2 Pa.C.S. § 504 requires that a license holder be afforded reasonable notice and an opportunity to be heard prior to suspension or revocation of the license.

Comment: BSC noted proposed § 4.15(a)(3) and observed that in its experience State inspectors have tested and approved scales for commercial use that BSC determined should not have been approved. BSC stated that this situation underscores the need for a rigid, uniform testing procedure.

Response: The Department believes the final-form regulation will help establish a uniform testing procedure for commercially used weighing and measuring devices, and

encourages the commentator to report any incident where a State inspector approved a device which the commentator feels should not have been approved.

Comment: IRRC recommended proposed § 4.15(b) be revised to require the Department to include in a due process hearing notice a reference to the rules of administrative practice and procedure applicable to the proceedings.

Response: Although the Department will cite any applicable rules of administrative practice and procedure in the written notice of its intention to suspend or revoke certification described in § 4.15(b) of the final-form regulation, it does not believe it necessary that the final-form regulation impose this as a regulatory requirement.

Comment: PWSC reviewed the penalty provisions in proposed § 4.17 (relating to civil penalties), and expressed apprehension that this section might be used as a revenue generating device by the Department. The commentator acknowledged that – under the Department’s long standing “inform, warn, prosecute” approach to weights and measures matters - § 4.17 is not likely to be misused. The commentator’s apprehensions were with respect to *future* administration of the Act by the Department.

Response: The provisions appearing in § 4.17 of the final-form regulation are derived from § 4191(b) of the Act, which authorizes civil penalties of up to \$10,000 for violations of the Act. The Department has no plans to change its “inform, warn, prosecute” approach to enforcement, though. Any civil penalty assessed by the Department will be in proportion to the seriousness of the violation.

Comment: The House Committee, the Senate Committee, Representative Cappabianca and Senator Madigan – the prime sponsor of the Act – noted that the legislative intent of the Act was to permit the private sector to implement private certification programs and allow for self-inspection of UPC scanning systems and PLU devices by these private certification programs. In other words, a retail store chain that develops its own private certification program and has its UPC scanning systems and PLU devices inspected under this private certification program in accordance with the Act should be exempt from annual inspection and testing by the Department.

These commentators recommended the final-form regulation contain specific language stating that self-inspection by private certification programs is acceptable. IRRC suggested that – *if* the Department intends to allow for self-inspection by private certification programs - §§ 5.21 and 5.22 of the final-form regulation (relating to registration and requirements and fees, respectively) should clearly reflect this. The Senate Committee recommended this be accomplished by revising proposed § 5.2(c) (relating to requirement of annual testing and inspection).

Response: The Department agrees that the final-form regulation should more clearly state that self-inspection by private certification programs is acceptable. The Department has revised § 5.5(a) of the final-form regulation (relating to authority of certified UPC/PLU inspector) to accomplish this clarification. Although the commentators suggested this clarification be accomplished in other sections of the regulation, the Department believes the clarification best fits within the context of the subject matter of § 5.5.

Comment: The SCP raised several concerns regarding the practice of allowing self-inspection of commercially used UPC scanning systems and PLU devices by private certification programs. The SCP registered its strong opposition to this type of self-inspection, and urged the Department to reconsider allowing this practice in the final-form regulation. The basis for this opposition was that: 1) Self-inspection allows certified UPC/PLU inspectors to be employees or for-profit contractors of an entity whose UPC scanning systems and PLU devices it inspects; 2) Self-inspection enables entities which have UPC scanning systems or PLU devices that must be inspected under the Act to create their own private certification programs for the purpose of inspecting themselves; and 3) Self-inspection cannot be unannounced or unbiased. The SCP believes self-inspection is contrary to the consumer protection interests the Act attempts to protect. IRRRC recommended that – *if* the Department intends to allow for self-inspection by private certification programs – it specify the criteria or limitations “...necessary to preserve the unannounced inspection requirement and the integrity of procedures to protect consumers and users.”

Response: The Department believes the Act cannot be construed as prohibiting self-inspection of commercially used UPC scanning systems and PLU devices by private certification programs. This is underscored by the fact that - as noted in the previous comment - the Department received comment letters from a number of legislators encouraging the Department to clarify in the final-form regulation that self-inspection by private certification programs is acceptable.

Section 4112(c) of the Act refers to “private certification programs”, but imposes no requirement these programs be non-profit or be completely disassociated from the entities whose UPC scanning systems and PLU devices they inspect.

A person conducting an inspection of a UPC scanning system or PLU device may be an employee or paid contractor of the entity owning that system or device. In accordance with § 5.4 of the final-form regulation (relating to certified UPC/PLU inspector), though, any person intending to conduct such an inspection must first be designated a certified UPC/PLU inspector. Sections 5.14 and 5.15 of the final-form regulation (relating to inspection and testing by the department and suspension or revocation of certification, respectively) establish the Department’s authority to oversee the quality of inspections being conducted by certified UPC/PLU inspectors, and allow the Department to revoke or suspend the certification of persons for a variety of reasons – including fraud or incompetence in inspections.

Section 4112 of the Act requires inspections of UPC scanning systems and PLU devices by private certification programs be conducted on an unannounced basis. The Department has recourse against the certified UPC/PLU inspector if that person fails to inspect on an unannounced basis. The Department implemented IRRRC’s suggestion, and revised § 5.5 of the final-form regulation to address the requirement that a certified UPC/PLU inspector conducting inspections as part of a private certification program conduct those inspections on an unannounced basis. This requirement is also set forth in § 5.22(a) of the final-form regulation (relating to requirements and fees). The Department is satisfied the final-form regulation properly implements the provisions of the Act relating to self-inspection of commercially used UPC scanning systems and PLU devices.

Comment: PAWM voiced the same comment offered by the SCP, and suggested that self-inspection of commercially used UPC scanning systems and PLU devices be prohibited. PAWM also offered the recommendation proposed § 5.2(c)(3) (relating to requirement of annual testing and inspection) be revised to accomplish this prohibition.

Response: The Department declines to implement PAWM's suggestion, for the reasons articulated in the response to the immediately preceding comment.

Comment: PWSC reviewed proposed § 5.2 and stated that it is ultimately the responsibility of the owner or user of a commercially used weighing and measuring device to ensure the device is inspected in accordance with the requirements of the Act. The commentator asked whether such an owner or user would tend to utilize State Inspectors or authorized county sealers or city sealers instead of paying a "CEWM" for inspection services.

Response: The Department notes that the inspections of UPC scanning systems and PLU devices referenced in § 5.2 of the final-form regulation will be conducted by certified UPC/PLU inspectors, rather than CEWMs. With this clarification, the Department is inclined to agree with the commentator. The Department will not charge for inspection services required under the Act. County sealers and city sealers who conduct inspections pursuant to a memorandum of understanding with the Department may charge a fee that reasonably reflects the costs of inspection. CEWMs and private certification programs may inspect on a for-profit basis and charge any fees they deem appropriate. The commentator is correct that the owner of any commercially used weighing and measuring device that is required to be inspected under the Act may have the inspection conducted by a State Inspector at no charge (except where a county or city has undertaken inspection responsibilities pursuant to a memorandum of understanding with the Department – in which case the county or city may charge a fee that reflects the costs that are incidental to the performance of its contractual duties).

Comment: IRRC suggested proposed § 5.2(c)(1) be revised for greater clarity.

Response: The Department is satisfied that § 5.2(c)(1) of the final-form regulation clearly and accurately describes the appropriate inspection interval, and declines to implement IRRC's suggestion.

Comment: Representative Cappabianca reviewed proposed § 5.15 (relating to suspension or revocation of certification) and noted that the suspension and revocation actions described in that section are only applicable to a certified UPC/PLU inspector who conducts inspections on behalf of a private certification program - as opposed to a certified UPC/PLU inspector who is a city sealer, a county sealer or an employee of the Department. The commentator requested an explanation of the Department's reasons for limiting its suspension and revocation authority in this section.

Response: Three categories of persons may conduct inspections of commercially used UPC scanning systems and PLU devices under the Act. These are: 1) State inspectors of weights and measures (who are employees of the Department); 2) employees of a city or county acting as city sealers or county sealers in accordance with a memorandum of understanding with the Department; and 3) persons acting on behalf of private certification programs. The Department believes it has immediate and adequate

recourse against any person in the first two categories who conducts any of the violations listed in § 5.15(a)(1)-(5) of the final-form regulation, and that including these two categories of person within § 5.15 is unnecessary. With respect to a State inspector who commits such a violation, the Department can counsel, retrain and – if necessary – discipline its employee without regard to the suspension or revocation procedure. With respect to city sealers or county sealers, the Department has recourse against the city or county under the memorandum of understanding.

Comment: IRRC recommended proposed § 5.15(b) (relating to suspension or revocation of certification) be revised to cite the applicable rules of administrative practice and procedure the Department will employ in a due process hearing.

Response: The Department will cite any applicable rules of administrative practice and procedure in the written notice of its intention to suspend or revoke certification described in § 5.15(b) of the final-form regulation.

Comment: PWSC reviewed proposed § 5.21 (relating to registration) and asked whether a large company utilizing multiple scales could hire or employ its own CEWM. The commentator also asked whether a company could have a CEWM on staff to certify scales it loans or rents to third parties.

Response: The answer to both of the commentator's questions is "yes."

Comment: Representative Cappabianca noted that proposed § 6.2 (relating to registration requirement) would exempt sellers, installers, servicers and repairers of commercially used UPC scanning systems and PLU devices from having to register with the Department. The commentator sought the rationale for this exception, noting that if the Department deleted this exception from the final-form regulation a registered seller, installer, servicer or repairer of commercially used UPC scanning systems or PLU devices would be required to provide the Department information in accordance with the reporting responsibilities set forth at § 6.6(b) of the final-form regulation (relating to newly-installed or repaired weighing or measuring devices). The commentator believes this information would be useful to the Department in determining the number and location of UPC scanning systems and PLU devices throughout the Commonwealth. IRRC also endorsed this comment, and raised the question of whether the Department had the statutory authority to grant the exception set forth in proposed § 6.2.

Response: The Department declines to delete the exception at § 6.2(b) of the final-form regulation.

The Department has the statutory authority – under § 4113 of the Act – to establish the registration requirements set forth in Chapter 6 of the final-form regulation. The Department believes this authority includes the discretion to exclude certain categories of persons from the registration requirement if it has a reasonable basis for doing so. This discretion is evident in § 4113 of the Act, which begins with the phrase "The department shall have the authority . . ." to require registration. This grant of discretion contrasts with the next section of the Act – § 4114 - which begins with the phrase "The department shall establish . . ." and imposes a mandatory requirement upon the Department.

In light of the following, the Department believes it has a reasonable basis for the exception set forth in § 6.2(b) of the final-form regulation.

Although UPC scanning systems and PLU devices are referenced in the definition of “weights and measures” at § 4102 of the Act and the Department is responsible to inspect them under § 4112(c) of the Act, they are unlike other “weights and measures” in several important respects.

UPC scanning systems and PLU devices do not “weigh” or “measure” anything.

The principal components of a UPC scanning system or a PLU device typically include computer equipment that has applications other than commercial weighing or measuring. For example, computer equipment that can be used to retain a database reflecting items in a store’s inventory and the corresponding price of each item in that inventory can also be used for other purposes. A person who sells or installs that computer equipment would probably not consider himself or herself a seller or installer of commercial weighing and measuring devices.

Section 7.3 of the final-form regulation (relating to requirement: registration of devices by owners) contains a requirement that the owners of commercially used UPC scanning systems and PLU devices register these devices with the Department. In addition, § 5.12 of the final-form regulation (relating to inspections; reporting procedures) requires all certified UPC/PLU inspectors to file reports with the Department pertaining to any inspection the certified UPC/PLU inspector conducts. On balance, the Department is satisfied these sections of the final-form regulation will facilitate the Department’s effort at developing a comprehensive database of the numbers, types and locations of commercially used UC scanning systems and PLU devices in the Commonwealth.

Comment: BSC asked whether the registration requirements set forth in proposed Chapter 6 (relating to registration of sellers, installers and repairers of weighing and measuring devices) were applicable to *business entities* engaged in repairing, selling, installing or servicing commercially used weighing and measuring devices, *employees* of those business entities, or *both*.

Response: The Department intended this Chapter as requiring the registration of natural persons, as opposed to “legal persons” such as corporations, partnerships or other business organizations. Since the term “person” is defined in § 2.1 of the final-form regulation and is used throughout the document, though, and includes “legal persons”, the Department has revised §§ 6.1, 6.2, 6.3 and 6.4 in the final-form regulation to make the necessary distinction between natural and legal persons.

Comment: PWSC reviewed the registration requirements for sellers, installers, servicers and repairers of commercially used weighing and measuring devices set forth in proposed § 6.2 (relating to registration requirement), and asked whether there was any relationship between these requirements and being a CEWM. This also raised the question: “Can one person (technician) have both titles?”

Response: The requirements of Chapter 6 (relating to registration of sellers, installers and repairers of weighing and measuring devices) and Chapter 4 (relating to certified examiners of weights and measures) are distinct from each other. A CEWM may also be a registrant under § 6.2.

Comment: BSC reviewed proposed Chapter 6 and asked how the Department intended to ensure persons registered under that Chapter had adequate equipment and skill to perform installations and repairs of commercially used weighing and measuring devices.

Response: Section 6.3 of the final-form regulation (relating to field standards) requires a prospective registrant have adequate field standards. Section 6.4((b)(5) of the final-form regulation (relating to registration procedure) requires that an applicant for registration provide a copy of the current verification from the State Metrology Laboratory with respect to the accuracy of these field standards. Section 6.6 of the final-form regulation (relating to newly-installed or repaired commercial weighing or measuring devices) requires a newly-installed or repaired commercial weighing or measuring device be inspected by a State inspector or, where appropriate, a city sealer or county sealer. These provisions will help ensure the quality of installations and repairs of commercial weighing and measuring devices.

Comment: PWSC reviewed proposed § 6.3 (relating to field standards) and asked how often it would be necessary for a CEWM to have the accuracy of the field standards that CEWM uses certified by the State Metrology Laboratory.

Response: The Department has revised § 6.3(b) of the final-form regulation to require that verifications of accuracy for field standards be obtained at intervals of no greater than one year.

Comment: IRRC reviewed proposed § 6.4(c) (relating to registration procedure) and suggested it be revised to reflect that an applicant for registration under Chapter 6 of the final-form regulation may not act as a seller, installer, repairer or servicer of commercially used weighing and measuring devices in the Commonwealth until notified by the Department that the application has been approved.

Response: The Department accepts this comment, and has revised § 6.2(a) of the final-form regulation accordingly.

Comment: PAWM suggested proposed § 6.6(b) (relating to newly-installed or repaired commercial weighing and measuring devices) be revised to allow an installer or repairer to report an installation or repair of a commercial weighing or measuring device to the appropriate city sealer or county sealer, rather than the Department, in those instances where the city or county in which the device is located has assumed enforcement responsibilities pursuant to a memorandum of understanding with the Department. The commentator stated that this revision would decrease the time between notification and inspection. IRRC suggested this subsection be revised to require reporting to *both* the Department and the appropriate city sealer or county sealer.

Response: The Department declines to implement the suggested revision. The Department considered two factors in arriving at its decision: First, the Department has an interest in learning the location and type of newly-installed or repaired commercially used weighing and measuring devices and adding these devices to its database. Second, the owner or operator of such a device has an interest in having the Department (or, if appropriate, a county sealer or city sealer) inspect the device promptly. The Department

elected to address both these interests by requiring the installation or repair be reported to the Department and by extending the time within which the Department (or county sealer or city sealer) must inspect the device. Currently, under the regulation at 7 Pa. Code § 35.3 (relating to conditional use prior to inspection), newly installed devices must be inspected within 5 days and repaired devices must be inspected within 10 days. Section 6.6(d) of the final-form regulation extends both of these deadlines to 15 days. This should allow ample time for the Department to conduct the inspection or advise the appropriate county sealer or city sealer to conduct the inspection.

Comment: Representative Cappabianca reviewed proposed § 6.6(d) (relating to newly-installed or repaired commercial weighing and measuring devices) and took issue with the language in that subsection requiring that a newly-installed or repaired commercial weighing and measuring device be removed from commercial use if the Department (whether through one of its State inspectors or through county or city sealers acting pursuant to a memorandum of understanding with the Department) is unable to complete an inspection of that device within 15 days of the installation or repair. The commentator characterized this language as punishing one entity for the inactivity of another.

Response: Although the commentator's point is well taken, the Department does not elect to revise § 6.6(d) of the final-form regulation for the reasons which follow.

Section 6.6 of the final-form regulation attempts to strike a balance among the interests of the Department, the public and those who use weighing and measuring devices in commerce. New or repaired commercial weighing and measuring devices should be inspected within a reasonable time to ensure their accuracy. At the same time, the Department cannot always dispatch an inspector to immediately inspect such a device. Overlaying these considerations is the fact that the Act is essentially a consumer protection statute. Where the interests of consumers clash with those of users of commercial weighing and measuring devices, the Department is inclined to compromise to the extent practicable and resolve the ultimate issues in favor of the consumer.

The Department believes it a reasonable compromise to establish a 15-day period within which to accomplish the required inspection. The current regulation on this subject (which is rescinded in the final-form regulation) is at 7 Pa. Code § 35.3 (relating to conditional use prior to inspection). That regulation allowed the use of an uninspected new weighing or measuring device for 5 days and an uninspected repaired weighing or measuring device for 10 days. To the extent § 6.6(d) of the final-form regulation extends those use periods to a uniform 15 days, it constitutes a benefit to those who use commercial weighing and measuring devices in commerce. The Department believes its responsibility to consumers requires there be some point beyond which an uninspected new or repaired weighing and measuring device must be removed from commercial use, regardless of whether the failure to conduct the inspection in a timely manner is the fault of the Department.

Since the Department had only occasional difficulty in meeting the previous 5-day and 10-day inspection deadlines, it is anticipated there will be very few, if any instances where a required inspection can not be conducted within the 15-day period.

Comment: IRRC suggested the insertion of a comma after the term “uninspected” in proposed § 6.6(d).

Response: The Department accepts this suggestion and has implemented it in the final-form regulation.

Comment: IRRC suggested proposed § 6.6(d) be revised to establish a requirement that a seller, installer, servicer or repairer of commercially used weighing and measuring devices notify the Department when a particular device is taken out of commercial use.

Response: The Department agrees that it would be useful in allocating the Department’s inspection resources to know when a particular commercial weighing and measuring device is taken out of service. The Department believes that the entity in the best position to provide this information is the owner or user of the device. These owners or users are required to register their devices under § 7.3 of the final-form regulation (relating to requirement: registration of devices by owners). In response to this comment the Department has added § 7.3(c) to the final-form regulation. The new subsection will require a person who registers a commercially used weighing and measuring device with the Department to notify the Department within 30 days of the date the device is removed from commercial use.

Comment: BSC noted that proposed § 6.7 (relating to expiration/renewal of registration) would require a registered seller, installer, servicer or repairer of commercially used weights and measures to maintain current verification from the State Metrology Laboratory that the field standards used by that person are accurate. BSC believes this provision contradicts proposed § 6.3(a) (relating to field standards).

Response: The Department does not believe there is an inconsistency between the standards set forth in §§ 6.3(a) and 6.7 of the final-form regulation. Both sections reference the requirement that a seller, installer or repairer of commercially used weighing and measuring devices maintain field standards that have been tested for accuracy.

Comment: BSC asked whether proposed Chapter 7 (relating to registration and report of inspection of commercial weighing and measuring devices) was necessary, and whether it could be deleted from the final-form regulation.

Response: The subject matter of Chapter 7 is necessitated by § 4114 of the Act, which requires the Department to: “...establish, by regulation, a program requiring the registration and reporting of inspection and testing of weighing and measuring devices which are required to be inspected on an annual basis in accordance with section 4112...” of the Act.

Comment: BSC suggested that proposed § 7.1 (relating to purpose) be revised to include timing devices, UPC scanning systems, PLU devices, and other devices within the weights and measures described in that section. BSC suggested this expanded explanation of what constitutes a weighing and measuring device be set forth throughout the regulation.

Response: The Department believes the definition of the term “weights and measures” at § 2.1 of the final-form regulation (relating to definitions) is adequate to convey the meaning of the term throughout the document.

Comment: BSC reviewed proposed § 7.3 (relating to requirement: registration of devices by owners) and asked how the owner of a weighing or measuring device that is required to be registered with the Department would be made aware of this obligation. BSC suggested the Department make an outreach effort through the media to accomplish this notification.

Response: The Department accepts this comment and will make the media outreach effort suggested by BSC. In addition, the Department will work with industry groups, such as the Pennsylvania Retailers Association, to disseminate information regarding the registration requirement. Also, registered sellers, installers and servicers of commercially used weights and measures will be of some assistance in notifying their customers of the reporting requirements set forth in Chapter 7 of the final-form regulation. The Department will also use reports of the installation and repair of commercially used weights and measures to assemble a database of persons who own commercially-used weighing and measuring devices, and will use this information to remind device owners of their registration obligations.

Comment: Representative Cappabianca encouraged the Department to quickly develop the standardized weighing or measuring device registration form referenced in proposed § 7.5(a) (relating to registration process).

Response: The Department has already developed the form referenced by the commentator, and is in the process of distributing them. The Department may yet make further refinements to the form in an effort to make it more “user-friendly.”

Comment: IRRC suggested proposed § 7.5 be revised to clearly identify those persons who are required to register commercially used weighing and measuring devices, and recommended that this be accomplished by inserting a new subsection (a) and redesignating subsequent subsections. IRRC also suggested proposed § 7.5(a) be revised by inserting the word “approved” before “weighing or measuring device registration form.” PWSC also took note of the ambiguity of this proposed section, and asked for clarification as to whether it is the device seller’s responsibility or the device owner’s responsibility to register.

Response: Although the Department believes § 7.3 (relating to requirement: registration of devices by owners) clearly states that *owners* of commercially used weighing and measuring devices are responsible to register these devices, it has restated this in § 7.5(a) of the final-form regulation.

Comment: IRRC reviewed proposed § 8.3 (relating to training with respect to individual types of weighing and measuring devices) and suggested the title of that section be revised to more accurately reflect its contents. The title IRRC recommended was “Training and certification with respect to individual types of weighing and measuring devices.”

Response: The Department accepts this suggestion, and has redesignated § 8.3 in the final-form regulation accordingly.

Comment: IRRC recommended proposed § 8.4 (relating to prior training) be revised to require the persons described in that section to register with the Department or obtain certification from the Department.

Response: The Department accepts this comment, and has revised § 8.4 of the final-form regulation to require the submission of proof of course completion.

Comment: IRRC suggested proposed § 8.5 (relating to supplemental or refresher training) be revised by replacing the word “adequate” with the phrase “a reasonable number of.”

Response: The Department has implemented this suggestion in § 8.5 of the final-form regulation.

Comment: Proposed § 9.5(b)(4) (relating to application for public weighmaster’s license) would require a person to verify two items in an application for a weighmaster’s license. First, the applicant would have to verify that the scales on which the applicant would conduct public weighing were the license issued belong to a type of weighing and measuring device approved by the Department in accordance with Chapter 10 of the final-form regulation (relating to device type approval). Second, the applicant would have to verify that the scales were approved for use by a weights and measures officer of the Commonwealth as of the date of application. BSC asked how the applicant would have these two pieces of information.

Response: The Department revised § 9.5(b)(4) of the final-form regulation in response to this comment. The requirement that an applicant verify that the scale to be used in public weighing is of a type approved by the Department has been deleted, but the requirement the scale have a current inspection has been retained. The Department would have a record of whether the particular scale is of a type of weighing and measuring device approved by the Department, thereby obviating the need for an applicant to confirm this. A State inspector, county sealer or city sealer who conducts an inspection of a weighing and measuring device under authority of the Act must report that inspection to the Department. In most instances this will allow the Department to crosscheck to determine whether the inspection is current.

Comment: IRRC suggested that the clarity of proposed §§ 9.5(d) and (e) would be improved if those subsections were revised to make reference to a “completed” application.

Response: The Department accepts this suggestion, and has implemented it in §§ 9.5(d) and (e) of the final-form regulation.

Comment: IRRC noted that proposed §§ 9.5(e)(2) and (3) do not establish deadlines within which the actions described in those paragraphs are to occur, and suggested deadlines be inserted in the final-form version of these provisions.

Response: The Department accepts this suggestion in part and rejects it in part. Section 9.5(e)(2) of the final-form regulation provides that the Department will suspend

its review of a public weighmaster's license application if the application is incomplete, illegible or otherwise deficient. Since the provision also requires the Department to apprise the applicant of the nature of the problem with the application, the Department does not believe it necessary to prescribe a particular time period within which the problem must be corrected. The onus is on the applicant to rectify the problem. The consequences of failure to rectify the problem are borne by the applicant. This should motivate an applicant to act within a reasonable time to rectify any problem with the application.

With respect to § 9.5(e)(3) of the final-form regulation, though, the Department agrees with IRRC and has inserted language requiring that – in the event the Department refers an application to a county sealer or city sealer for the report described in that paragraph – the report be completed and returned to the Department within 30 days.

Comment: BSC noted that proposed § 9.10(b)(7) (relating to weighmaster's certificate) would require a weighmaster's certificate to express weights in avoirdupois pounds. BSC asked whether this language would prohibit weights from being expressed in tons. BSC suggested the Department delete this paragraph or be more specific.

Response: The referenced paragraph restates a requirement imposed under § 4152(7) of the Act. Weights must be expressed in avoirdupois pounds, rather than tons. Most – if not all – scales in commercial use in the Commonwealth reflect weight in pounds rather than tons.

Comment: BSC noted that proposed § 9.10(d) would require a weighmaster's certificate form consist of an original marked "Customer's copy" and the two remaining copies marked "Void – Customer do not accept". BSC asked whether existing weighmaster's certificate forms would have to be discarded and requested the reason for the requirements of this subsection.

Response: The requirements imposed by this subsection are not new. The current regulation at 70 Pa. Code § 3.13(b) (relating to ownership of specific items required) imposes this exact requirement. Section 9.10(d) of the final-form regulation merely restates the current regulatory requirement. For this reason, the requirements of § 9.10 should not necessitate the replacement of current weighmaster's certificate forms. In addition, the requirement that the duplicate copies that are not "Customer's copies" be marked "Void – Customer Do Not Accept" helps prevent fraudulent transactions.

Comment: Proposed § 9.11(b) (relating to issuing a public weighmaster's certificate) requires a licensed public weighmaster to use scales that are of a type approved by the Department and that have been inspected as required under the Act. BSC asked how a licensed public weighmaster is expected to know that scales meet these requirements.

Response: As stated in response to a previous comment, scales that are of a type of weighing and measuring device approved by the Department are required to be clearly, conspicuously and permanently marked to reflect this fact. This requirement appears at § 10.8(a) of the final-form regulation (relating to marking of approved devices). In addition, a State inspector, county sealer or city sealer who conducts an inspection of a weighing and measuring device under authority of the Act must report that inspection to

the Department in accordance with § 7.4(a) (relating to report by inspectors) and affix a seal to the device in accordance with § 4119 of the Act. These markings, reports or seals should be of assistance to the licensed public weighmaster in meeting the requirements of § 9.11(b) of the final-form regulation.

Comment: BSC asked why the Department feels it necessary to impose the requirement that a licensed public weighmaster issue weighmaster's certificates in consecutive order of the serial numbers printed on them. This requirement appears at § 9.11(c) of the final-form regulation.

Response: The Department requires licensed public weighmasters to retain copies of every weighmaster's certificate issued for a period of 2 years. This requirement appears in § 9.12 of the final-form regulation (relating to retention and inspection of certificates). The requirement that certificates be issued in serial order should make it easier for the Department to detect fraudulent records. It should also make it more difficult for a dishonest licensed public weighmaster to defraud a customer.

Comment: Representative Cappabianca recommended the phrase "made out in" at proposed § 9.11(d) be replaced with "completed with." IRRRC offered the same comment.

Response: The Department accepts the recommendation and has revised § 9.11(d) of the final-form regulation accordingly.

Comment: Proposed § 9.11(f) would require that a weighmaster's certificate clearly show what weights were actually determined. BSC asked for clarification of this term.

Response: The Department agrees that the term "clearly" in proposed § 9.11(f) was vague, and has replaced that term with "legibly" in the final-form regulation. In the past the Department has noted a rather high percentage of weighmaster's certificates that were illegible or incomplete. Section 9.11(f) of the final-form regulation sets forth a detailed explanation of the type of information required in order for a weighmaster's certificate to be complete.

Comment: BSC asked whether proposed § 9.11(f) would require that a public weighmaster's certificate show the date the tare weight of a vehicle was determined if that date is different from the date of the commercial weighing.

Response: Section 9.11(f) of the final-form regulation clearly requires the date the tare weight of a vehicle is determined be reflected on the weighmaster's certificate.

Comment: BSC asked whether it would be necessary for a weighmaster's certificate to identify all of the scales upon which weights reflected on that certificate have been determined. BSC also asked whether scales would have to be identified if the exact scale used in the weighing is not known.

Response: Section 9.11(f) of the final-form regulation requires that all scales used in a public weighing be identified on the weighmaster's certificate. The Department believes this a reasonable requirement. If a licensed public weighmaster cannot identify

the scales upon which a weight was determined, that weight should not be used on a weighmaster's certificate.

Comment: BSC requested an explanation of proposed § 9.11(g), which described a procedure for reweighing solid fuel. The request also stated:

What happens when feed or coal cannot all be delivered:

5 ton was ordered only 7600 lb was left at the delivery site, the rest did not fit. By the way, how was it determined if it happened for two different types of products at two locations on one truck load? How do you document all that?

Response: Section 9.11(g) of the final-form regulation essentially restates the current regulation at 70 Pa. Code § 1.32(a) (relating to reweighing and issuance of certificates). The Department believes § 9.11(g) describes reweighing procedures in an understandable way. The intention of the subsection is to prevent there being two separate weighmaster's certificates with respect to a single load of solid fuel. If there were two valid weighmaster's certificates, the potential for fraud would increase. Section 9.28 of the final-form regulation (relating to reweighing and issuance of certificates) also addresses reweighing of solid fuel.

In a situation where there is a weighmaster's certificate for a load of solid fuel and the entire quantity of the fuel cannot be delivered, a new weighmaster's certificate should be issued with respect to the solid fuel delivered.

With respect to the commentator's question regarding two or more types of solid fuel on the same truck, a separate weighmaster's certificate would be required with respect to each type of solid fuel. This is clarified in § 9.21 of the final-form regulation (relating to weighmaster's certificate required).

Comment: BSC reviewed proposed § 9.11(h) and asked how owners of scales upon which licensed public weighmasters conduct public weighing would know of their obligation to retain copies of weighmaster's certificates for 2 years.

Response: The requirements of this section are not new. Section 9.11(h)(2) of the final-form regulation essentially restates the 2-year record retention requirement set forth in the current regulation at 7 Pa. Code § 3.14 (relating to duties of the weighmaster). In addition, the Department provides each weighmaster with a booklet describing – among other topics related to the duties of a licensed public weighmaster – the public weighmaster's obligation to retain records.

Comment: IRRRC reviewed proposed § 9.23 (relating to certificate affecting weighing requirements) and recommended that subsections (a) and (d) be rewritten into several shorter sentences. IRRRC stated that this revision would add clarity.

Response: The Department accepts the recommendation, and has revised § 9.23 of the final-form regulation accordingly.

Comment: IRRRC suggested proposed § 9.24 (relating to limitations of certificate for anthracite) be revised by rewriting subsection (a) into several shorter sentences and adding the word "authorized" before the word "officer" in the Certificate of Quality set forth in that subsection.

Response: The Department agrees that implementation of these suggestions would add clarity to the final-form regulation, and has revised that document accordingly.

Comment: IRRC noted that proposed § 9.25 (relating to responsibilities of weighmasters and shippers) does not clearly delineate a difference between the responsibilities of weighmasters and shippers. If no difference exists, IRRC would favor combining subsections (a) and (b). If there *are* substantive differences, IRRC recommends they be clarified.

Response: The Department accepts this comment and has revised § 9.25 of the final-form regulation by deleting any requirements or responsibilities with respect to shippers.

Comment: IRRC suggested several revisions to proposed § 9.26 (relating to certificate of special transportation). First, IRRC suggested the word “transporting” be inserted before the word “truck” in paragraph (a)(2) and before the word “vehicle” in paragraph (a)(4). Second, IRRC suggested subsection (b) be rewritten and divided into shorter sentences for clarity.

Response: The Department accepts these suggestions and has implemented them in the final-form regulation.

Comment: IRRC reviewed proposed § 9.28(a) (relating to reweighing and issuance of certificates) and suggested the third sentence be revised by replacing “may” with “shall” and “it” with “a weighmaster certificate”. IRRC offered the opinion this change would promote clarity.

Response: The Department accepts these suggestions, and has implemented them in the final-form regulation.

Comment: IRRC suggested proposed § 9.29 (relating to reciprocity with New York) be rewritten for improved clarity.

Response: The Department accepts this suggestion, and has revised § 9.29 of the final-form regulation accordingly.

Comment: Proposed § 10.2 (relating to prohibition with respect to unapproved devices) would prohibit the manufacture, use or sale of types of commercial weighing and measuring devices that have not been approved by the Department. BSC asked whether failure to comply with this provision would carry a penalty.

Response: Section 4191 of the Act provides for criminal and civil penalties with respect to violations of this regulation. Criminal prosecutions may be brought as summary offenses or misdemeanors of the third degree – depending on whether the violator has had prior violations. Civil penalties may range to \$10,000.

Comment: With respect to the previous comment, BSC also asked what would happen to existing “homemade scales” and scales already marked by the Department in accordance with § 10.8 (relating to marking of approved devices). BSC also wanted to know how engineering firms would be informed they could no longer sell “homemade scales” in Pennsylvania.

Response: The Department is not aware of any of its State inspectors having approved any “homemade scales” for commercial use in the Commonwealth. If the Department becomes aware of a scale that is not of a type approved in accordance with Chapter 10 of the final-form regulation, it will promptly have the scale removed from commercial use.

With respect to the question of whether engineering firms would be informed they could no longer sell “homemade scales” in the Commonwealth, the Department responds that it is aware of only one scale manufacturer located in the Commonwealth, and that the manufacturer will be informed of the requirements of the final-form regulation.

Comment: BSC reviewed proposed § 10.3 (relating to general standard for approval by the department), and offered the following comment:

Who makes the judgment call out in the field, when determining what is “reasonably permanent”? Is this saying that I can make homemade levers, sell non-NTEP equipment, sell and make one of a kind devices as long as it “is reasonably permanent”? This is a double standard and must be rewritten to eliminate “anything goes if it turns out okay”.

Response: The use of “homemade parts” in the repair of a commercially used weighing and measuring device of a type approved by the Department would result in that device being converted into something other than a device of a type that had been “approved”. The Department stands by the device type approval procedures set forth in Chapter 10 of the final-form regulation. Section 10.3 establishes a *general* standard. Sections 10.5 and 10.6 of the final-form regulation (relating to meeting the general standard for approval and application and review, respectively) provide a more detailed explanation of the information and certifications the Department may require as a prerequisite to approving a particular type of weighing or measuring device.

Comment: IRRC suggested the Department revise proposed § 10.3 to set forth more precise standards pursuant to which the Department would consider approval of types of weighing and measuring devices.

Response: The Department is not inclined to implement this suggestion. The standard set forth in § 10.3 of the final-form regulation is the same general standard prescribed under § 4170 of the Act. The Department believes § 10.5 of the final-form regulation (relating to meeting the general standard for approval) expands on this general standard and provides a precise explanation of the documentation necessary for device type approval. That section requires the Department to approve a device type where either NIST or NCWM has issued a certificate of conformance for that type. The standard is less precise with respect to UPC scanning systems and PLU devices, since neither NIST nor NCWM issues certificates of conformance for these devices.

Comment: Senator Madigan offered the comment that UPC scanning systems and PLU devices are not weighing and measuring devices, and recommended that proposed § 10.5(c) (relating to meeting the general standard for approval – UPC scanning systems and PLU devices) be deleted for this reason.

Response: Although the Department agrees that neither UPC scanning systems nor PLU devices “weigh” or “measure” as part of their normal function, these systems

and devices are included in the definition of “weights and measures” at § 4102 of the Act. In summary, UPC scanning system and PLU device technologies allow a store to maintain a computerized database of each item in its inventory – and its corresponding price. When a consumer purchases an item from that inventory, a code number is scanned or manually entered into the system and the resulting sales receipt identifies the item and its corresponding price.

Comment: BSC commented that it is internally inconsistent for the Department to require compliance with both the general standards for device type approval set forth in § 10.3 and the more specific standards set forth in § 10.5. This requirement appears in proposed § 10.6(d) (relating to application and review). IRRC also raised this comment.

Response: The Department rejects this comment. There is no inconsistency between the general standards set forth in § 10.3 of the final-form regulation and the more specific standards set forth in § 10.5 of the final-form regulation.

Comment: PWSC reviewed proposed § 10.6 and asked whether the Department would accept National Type Evaluation Program (“NTEP”) certificates as sufficient evidence of suitability for use in commercial weighing applications. If the Department would not accept these certificates, the commentator requested the Department explain its reasoning.

Response: The Department will accept NTEP certificates as proof that a particular type of weighing and measuring device is acceptable for commercial use. Section 10.5(a) of the final-form regulation provides that the Department will approve types of weighing and measuring devices that have been approved by NTEP. Section 10.6(b)(3) also refers to NTEP certificates as being acceptable documentation a device type should be approved.

Comment: IRRC recommended proposed § 10.6(a) be revised by substituting the word “request” for the word “obtain”, inserting the word “approved” before the word “application” and deleting the second sentence.

Response: The Department has implemented these recommendations in § 10.6(a) of the final-form regulation.

Comment: BSC also commented that in implementing proposed § 10.6(d) the Department should take pains to have all of the relevant information before it prior to granting device type approval, since – once granted – device type approval would be difficult to rescind.

Response: The Department agrees with this comment, and will be prudent in granting device type approval.

Comment: IRRC recommended proposed § 10.7(a)(3) (relating to certificate of approval) be revised for greater clarity.

Response: The Department has implemented this recommendation in § 10.7(a)(3) of the final-form regulation.

Comment: Representative Cappabianca suggested proposed § 10.8(b) (relating to marking of approved devices) be revised to require the posting or display of the device type approval certificates referenced in that subsection. The commentator stated that this requirement would prevent duplicate inspections.

Response: The Department believes State inspectors, county sealers and city sealers responsible for inspecting UPC scanning systems and PLU devices will know whether a particular system or device is of a type approved by the Department, since the Department is the entity that issues device type approval and will distribute its list of approved device types to these persons.

Comment: BSC reviewed proposed § 10.10 (relating to fees) and noted that the State Metrology Laboratory could charge an applicant for device type approval for testing incidental to review of the application. The commentator expressed apprehension that this testing would be less thorough than NIST or NCWM device type testing.

Response: The primary purpose of this section is to ensure that taxpayers' dollars do not have to pay for testing conducted by the State Metrology Laboratory in reviewing applications for device type approval. It is not the intention of the Department to create a lower approval standard than would be prescribed by NIST or NCWM for device type approval. Instead, the Department believes it important to have some procedure in place by which it can review devices that have not yet obtained NIST or NCWM approval.

Comment: IRRC offered the general observation that throughout the proposed regulation the Department has broad provisions requiring "other information deemed relevant by the Department" or "other information the Department might reasonably require", and suggested an effort be made to more specifically articulate the type of information the Department might require. IRRC noted this type of language at proposed §§ 5.8(b)(7), 6.4(b)(9), 6.5(b)(8), 9.7(7), 10.6(b)(7) and 10.7(a)(5).

Response: The Department implemented IRRC's suggestion by clarifying the referenced provisions.

Comment: IRRC offered the suggestion the Department revise the proposed regulation to make more extensive use of gender-neutral language. IRRC noted proposed §§ 6.5(d), 7.5(a), 9.6(b), 9.8, 9.10(a), 9.11(a) and 9.26(a) as sections in need of revision.

Response: The Department accepts this suggestion and has revised the corresponding sections of the final-form regulation accordingly.

Fiscal Impact

Commonwealth

The final-form regulation will have some fiscal impact upon the Commonwealth. The Department will require additional personnel to assist in administering the certification, registration, inspection and enforcement provisions of the Act. Although the need for these additional employees is driven by the Act, rather than the final-form regulation, the Department estimates it will need 2 additional office personnel, at an estimated total cost of \$100,000 per year, to meet this obligation. The Department may also require additional field personnel, but is not certain whether this will be necessary.

The need for additional field personnel will depend on the extent to which county sealers, city sealers, CEWMs and private certification programs perform inspections the Department would otherwise be required to perform under the Act.

Political Subdivisions

The final-form regulation will not impose appreciable costs upon political subdivisions. Although a county or city that agrees to perform required inspections under a memorandum of understanding with the Department must ensure that its county sealers or city sealers are adequately trained and certified to inspect the types of weights and measures they intend to inspect, this training is not expected to be costly. The Department will offer training for free or at cost to the extent practicable. In addition, § 4123 of the Act allows counties and cities to charge fees to defray expenses that are incidental to the performance of their inspection duties.

Private Sector

The final-form regulation might result in some cost to a person who seeks to become a CEWM or a certified UPC/PLU inspector but who has not yet taken the training the final-form regulation would require.

The final-form regulation will cost a business that elects to hire a CEWM to perform an inspection whatever fee that inspector charges. Similarly, a business that has a certified UPC/PLU inspector working as part of a private certification program conduct an inspection of its UPC scanning systems or PLU devices might be assessed a fee for this service. As stated, § 4123 of the Act allows counties and cities to charge fees to defray expenses that are incidental to the performance of their inspection duties. Since the number of businesses that will use these inspection alternatives is unclear, and inspection fee amounts are at the discretion of the inspector, the Department cannot offer a realistic estimate of the total costs involved.

Although the Department intends to offer some initial training for free or at cost, its ultimate intention is to allow industry groups or for-profit training providers to undertake a greater role in providing training.

General Public

The final-form regulation will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The final-form regulation will result in an increase in the amount of paperwork handled by the Department. In addition, a person conducting an inspection of a commercial weighing or measuring device under authority of the Act could be required to generate and file an inspection report form with respect to each establishment inspected.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Ride and Measurement Standards, 2301 North Cameron Street, Harrisburg, PA

17110-9408, Attention: Charles Bruckner, Director, or by telephoning Mr. Bruckner at (717)787-8744.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a), the Department submitted a copy of the Notice of Proposed Rulemaking published at 28 *Pennsylvania Bulletin* 5109 (October 10, 1998) on September 29, 1998 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with § 5(b.1), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was (deemed) approved by the House Agricultural and Rural Affairs Committee on _____, was (deemed) approved by the Senate Agriculture and Rural Affairs Committee on _____, and was (deemed) approved by the Commission on _____.

Findings

The Department of Agriculture finds the following:

- (1) Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments received were considered.
- (3) The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 28 *Pennsylvania Bulletin* 5109 (October 10, 1998).
- (4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department of Agriculture, acting under authority of the authorizing statute, orders the following:

- (1) The current regulations of the Department of Agriculture at 70 Pa. Code Chapter 1 (relating to solid fuel), 3 (relating to commodities other than solid fuel) and 35 (relating to inspection before use of weighing and measuring devices) are hereby rescinded.

- (2) The current statement of policy of the Department of Agriculture at 70 Pa. Code Chapter 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices – statement of policy) is hereby rescinded.
- (3) The current regulations of the Department of Agriculture at 70 Pa. Code Chapter 21 (relating to general provisions) are revised as set forth at Annex “A” hereto.
- (4) The new regulations of the Department of Agriculture at 70 Pa. Code Chapter 2 (relating to general provisions), 4 (relating to certified examiners of weights and measures), 5 (relating to UPC scanning systems and PLU devices), 6 (relating to registration of sellers, installers and repairers of weighing and measuring devices), 7 (relating to registration and report of inspection of commercial weighing and measuring devices), 8 (relating to training program for inspectors and sealers), 9 (relating to weighmasters) and 10 (relating to device type approval) are adopted as set forth at Annex “A” hereto.
- (5) The Secretary of Agriculture shall submit this Order, 28 *Pennsylvania Bulletin* 5109 (October 10, 1998) and Annex “A” hereto shall be submitted to the Office of General Counsel and to the Office of Attorney General for approval as required by law.
- (6) The Secretary of Agriculture shall certify this Order, 28 *Pennsylvania Bulletin* 5109 (October 10, 1998) and Annex “A” hereto and deposit them with the Legislative Reference Bureau as required by law.
- (7) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

BY THE DEPARTMENT OF AGRICULTURE

Samuel E. Hayes, Jr., Secretary

ANNEX "A"

Title 70. WEIGHTS, MEASURES AND STANDARDS

PART I. [WEIGHMASTERS] GENERAL

CHAPTER 1. (Reserved)

§ 1.1. (Reserved).

§§ 1.11-1.14. (Reserved).

§ 1.21. (Reserved).

§ 1.31-1.33. (Reserved).

§ 1.41. (Reserved).

CHAPTER 2. GENERAL PROVISIONS.

Sec.

2.1. Definitions.

2.2. Contacting the Department.

§ 2.1. Definitions.

The following word and terms, when used in this title, have the following meanings, unless the context clearly indicates otherwise:

Act - The Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4101-4194.

Bureau - The Bureau of Ride and Measurement Standards in the Department.

CEWM - Certified Examiner of Weights and Measures - An individual who has successfully completed the training course or courses prescribed by NIST and approved by the Department in accordance with § 4.6 (relating to training courses), and who holds a current certificate issued by the Department in accordance with the certification standards in this chapter.

CEWM Certificate - A document issued by the Department to a particular person to evidence that the named individual is a CEWM.

Certified UPC/PLU inspector - An individual who is certified by the Department as meeting the training and application requirements of Chapter 5 (relating to UPC scanning systems and PLU devices) and who is lawfully qualified to inspect UPC scanning systems and PLU devices for purposes of the testing and inspections required under section 4112(c) of the act relating to general testing and inspections).

Commodity - Anything such as goods, wares, merchandise, compound mixture or preparation, products of manufacture or any tangible personal property which may be lawfully kept, sold or offered for sale or any product being transported by vehicle and sold or priced by weight, or any service priced by weight.

Commodity in package form - A commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale exclusive of auxiliary shipping container enclosing packages that individually conform to the requirements of the act. An individual item or lot of any commodity not in package form but on which there is a marked selling price based on an established price per unit of weight or measure shall be construed to be a commodity in package form.

Consumer package or package of consumer commodity - A commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions and which usually is consumed or expended in the course of consumption or use.

Commercial feed facility - Each separate mill or plant, whether fixed or mobile, or distributor of commercial feed or customer-formula feed, as those terms are defined in [sections 5101-5115 of the act (relating to commercial feed act)] THE COMMERCIAL FEED ACT (3 Pa.C.S. §§ 5101-5115).

COMMERCIALLY USED WEIGHING AND MEASURING DEVICES - WEIGHTS AND MEASURES USED IN DETERMINING THE WEIGHT, MEASUREMENT OR COUNT OF COMMODITIES OR THINGS SOLD, OFFERED FOR SALE OR EXPOSED FOR SALE ON THE BASIS OF WEIGHT, MEASURE OR COUNT, OR IN COMPUTING THE BASIC CHARGE OR PAYMENT FOR SERVICES RENDERED ON THE BASIS OF WEIGHT, MEASURE, COUNT OR TIME. THE TERM ALSO INCLUDES UPC SCANNING SYSTEMS AND PLU DEVICES USED TO DETERMINE THE AMOUNT DUE WITH RESPECT TO COMMODITIES OR THINGS SOLD, OFFERED FOR SALE OR EXPOSED FOR SALE.

Cord - The amount of wood that is contained in a space of 128 cubic feet when the wood is racked and well stowed when used in connection with wood intended for fuel purposes.

Department - The Department of Agriculture of the Commonwealth.

Director - The Director of the Bureau.

Domestic consumers - Consumers in residences, apartment houses, stores, churches, office buildings and similar edifices, as distinguished from industrial plants.

Field standards - A standard that is calibrated against a reference standard, and is routinely used to calibrate or check material measures, measuring instruments or reference materials.

Food Act - 31 P.S. §§ 20.1-20.18.

Food establishment - A retail food store and a room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food. The term includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits.

Inspector or State inspector - A State inspector of weights and measures.

Intrastate commerce - All commerce or trade that is begun, carried on or completed wholly within the limits of this Commonwealth.

Introduced into intrastate commerce - The time and place at which the first sale or delivery, or both, of a commodity is made within this Commonwealth, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

Licensed public weighmaster - A person holding a valid weighmaster's license issued in accordance with section 4151 of the act (relating to licenses) and Chapter 8 (relating to training program for inspectors and sealers), and authorized to issue weighmaster's certificates.

Light fuel oils - Kerosene, number one fuel oil, number two fuel oil, number three fuel oil and any similar oil used for domestic heating as distinguished from heavy industrial oils.

Memorandum of understanding - A written agreement pursuant to which the Department delegates to a city or county all or a portion of the enforcement duties and responsibilities assigned the Department under section 4121(a) of the act (relating to powers and duties of director and inspector) and this chapter, and that is otherwise in conformance with section 4125 of the act (relating to division of responsibilities) [the requirements of section 4125 of the act].

NCWM - The National Conference on Weights and Measures.

NIST - The National Institute of Standards and Technology.

Nonconsumer package or package of nonconsumer commodity - A commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

Office standards - A complete set of copies of the State primary standards of weight and measure kept by the State Metrology Laboratory.

PLU-Price look-up - A pricing system where numbers are assigned to items or commodities, and the price is stored in a database for recall when the numbers are manually entered. PLU codes are used with scales, cash registers, and point-of-sale systems.

PLU device-Price look-up device - A device that can access a database price file. The term includes bar code beam or contact scanners, Optical Character Recognition (OCR) scanners or readers, magnetic scanners or readers, alpha or numeric keyboards, or both, voice response systems and computer-based retail price retrieval systems.

PLU system-Price look-up system - A computer-based retail price retrieval system.

Person - A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Private certification program - A program under which a Certified UPC/PLU Inspector inspects a commercially used UPC scanning system or PLU device at least annually on an unannounced basis, and which otherwise conforms with section 4112(c) of the act and Chapter 5.

Public eating and drinking place - A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge, or a place which otherwise conforms to the definition in section 1 of the Public Eating and Drinking

Place Law (35 P.S. § 655.1). The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Public Eating and Drinking Place Law - The act of May 23, 1945 (P.L. 926, No. 369)(35 P.S. §§ 655.1 et seq.).

Public weighing - The weighing of any commodity for any commercial purpose.

Scanning system - A general term for any of the several types of PLU technologies capable of communicating with a database price file or retail price retrieval system. The term includes hardware, software and supporting computer systems.

Sealer - A sealer or deputy sealer of weights and measures of a city, county or joint city-county jurisdiction.

Secretary - The Secretary of the Department.

Sell or sale - Barter and exchange.

Single service device - A device that is designed to be used commercially only once and then discarded.

Solid fuel - Anthracite, semianthracite, bituminous, semibituminous or lignite coal, briquettes, boulets, coke, gashouse coke, petroleum coke, carbon, charcoal or any other natural, manufactured or patented fuel not sold by liquid or metered measure.

State standards - Standards of weight and measure which conform with the standards of the United States, which have been certified as being satisfactory for use as the State standards by NIST, which are maintained at the State Metrology Laboratory and which otherwise conform with section 4106 of the act (relating to state [standard] STANDARDS of weight and measure).

Type - A class the individual objects of which are similar to another in design construction, size and material.

UPC scanning system - A [universal product code] scanning system CAPABLE OF READING UPC SYMBOLOGY AND REFLECTING THE INFORMATION REPRESENTED BY THAT SYMBOLOGY IN THE PRICE A PERSON PAYS FOR COMMODITIES OR THINGS SOLD, OFFERED FOR SALE OR EXPOSED FOR SALE.

UPC/PLU inspector's certificate - A document issued by the Department to a particular person to evidence that the named individual has successfully completed the training necessary for the person to be qualified to inspect UPC scanning systems and PLU devices for purposes of section 4112(c) of the act.

UPC-Universal product code - A general term for any of several types of bar code symbology. The term may refer to various versions of symbology developed by the Uniform Code Council, including UPC versions A or E of the Uniform Code Council: Codes 2 of 5, 3 of 9, 128 or any others available now or in the future.

Use in trade or commerce - Buying or selling goods, wares, merchandise or services.

Vehicle - Any device in, upon or by which any property, produce, commodity or article is or may be transported or drawn.

Weights and measures - Weights and measures of every kind, instruments and devices for weighing and measuring and any appliances and accessories associated with any or all such instruments or devices.

(i) The term includes the following: parking meters, postal scales and other scales used to determine shipping charges, pill counters, grain moisture meters, coin-operated person weighers, coin-operated air dispensers and coin-operated axle and vehicle scales.

(ii) The term also includes PLU devices and UPC scanning systems in food establishments required to be licensed in accordance with the Food Act.

(iii) The term does not include portable scales used to determine compliance with 75 Pa.C.S. Ch. 49 (relating to size, weight and load), meters for the measurement of electricity, gas, natural or manufactured, steam, coolant or water or the counting or timing of telephone calls when the same are operated in a public utility system or taxi meters. These portable scales, electricity, gas, steam, coolant, water and telephone meters and taxi meters are specifically excluded from the purview of the act and none of the provisions of the act apply to such meters or to any appliances or accessories associated therewith.

§ 2.2. Contacting the Department.

For purposes of this title, a person may contact the Department at the following address:

Department of Agriculture
Bureau of Ride and Measurement Standards
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone Number: 717/787-9089
FAX Number: 717/783-4158

CHAPTER 3. (Reserved)

§ 3.1. (Reserved).

§ 3.2. (Reserved).

§§ 3.11-3.14. (Reserved).

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

Sec.

- 4.1. Purpose.
- 4.2. CEWM.
- 4.3. Authority of a CEWM.
- 4.4. Categories and types of weighing or measuring devices WHICH A CEWM MAY INSPECT.
- 4.5. Certification standards.
- 4.6. Training courses.
- 4.7. Audit by Department.
- 4.8. Applying for certification.
- 4.9. CEWM Certificate.
- 4.10. Expiration of CEWM certificate.

- 4.11. Obtaining a new CEWM certificate.
- 4.12. Testing and inspection performance standards.
- 4.13. Reporting procedures for CEWM.
- 4.14. Inspection and testing by the Department.
- 4.15. Suspension or revocation of certification.
- 4.16. CEWM list.
- 4.17. Civil penalties.

§ 4.1. Purpose.

This chapter sets forth the certification standards required under section 4110(a)(4) of the act (relating to specific powers and duties of the department; regulations), under which the Department may approve training courses and certify [persons] A PERSON as a CEWM for purposes of the act.

§ 4.2. CEWM.

A person may apply to the Department for certification that the person is a CEWM for purposes of the act and this title, with respect to one or more of the categories or types of weighing or measuring devices in § 4.4 (relating to categories and types of weighing and measuring devices WHICH A CEWM MAY INSPECT).

§ 4.3. Authority of a CEWM.

(a) General. A CEWM may perform the annual testing and inspection of any weighing or measuring device which the Department is required to perform under section 4112(b) of the act (relating to general testing and inspections), AND IS LISTED IN § 4.4 (RELATING TO CATEGORIES AND TYPES OF WEIGHING AND MEASURING DEVICES WHICH A CEWM MAY INSPECT), and with respect to which the CEWM is certified. [These weighing and measuring devices consist of commercially used small capacity retail computing scales, retail package shipping scales, vehicle scales, small platform scales which weigh items to 1,000 pounds, truck-mounted fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers.] A CEWM MAY INSPECT THESE WEIGHING AND MEASURING DEVICES REGARDLESS OF WHETHER THE CEWM IS THE OWNER OR LESSOR OF THE DEVICES OR IS AN EMPLOYEE OR AGENT OF THE OWNER OR LESSOR OF THE DEVICES. The Department may accept the report of a CEWM as sufficient to meet [these] THE statutory testing and inspection requirements SET FORTH IN § 4112(b) OF THE ACT.

(b) Fees. A CEWM may charge a fee for inspection and testing services.

§ 4.4. Categories and types of weighing or measuring devices WHICH A CEWM MAY INSPECT.

The categories and types of weighing or measuring devices with respect to which a person may be certified as a CEWM are as follows:

- (1) Small capacity retail computing scales.
- (2) Retail package shipping scales.
- (3) Vehicle scales.

- (4) Small platform scales which weigh items to 1,000 pounds.
- (5) Truck-mounted fuel oil meters.
- (6) Truck-mounted liquid petroleum gas meters.
- (7) Compressed natural gas meters.
- (8) Retail motor fuel dispensers.

§ 4.5. Certification standards.

A person seeking a CEWM certificate from the Department shall do the following:

- (1) Successfully complete a training course prescribed by NIST [and approved by the Department in accordance with § 4.6 (relating to training courses),] for the category or type of weighing or measuring device with respect to which the certificate is sought.
- (2) Comply with the application and other requirements of this chapter.

§ 4.6. Training courses.

(a) [General approval of] NIST training courses. [A] IN ACCORDANCE WITH § 4110(b) OF THE ACT, A training course now or hereafter prescribed by NIST [and approved by the Department] for a particular category or type of measuring or weighing device [is hereby designated] LISTED IN § 4.4 (RELATING TO CATEGORIES AND TYPES OF WEIGHING AND MEASURING DEVICES WHICH A CEWM MAY INSPECT) IS an appropriate training course for the subject category or type of weighing or measuring device. [The Department will grant its approval of a training course prescribed by NIST by either including it on the list set in subsection (b) or by adding it to the list by publication in accordance with subsection (c)]

(b) OBTAINING A List of current [approved] NIST training courses. [The current NIST training courses and the category or type of weighing or measuring device with respect to which each is approved are as follows:

<i>Course Number/ Title</i>	<i>Category/Type</i>
202/Retail Computing Scales	Small capacity retail computing scales
None	Retail package shipping scales
206/Vehicle and Axle-Load Scales	Vehicle scales
203/Medium-Capacity Scales	Small platform scales which weigh items to 1,000 pounds
303/Vehicle Tank Meters	Truck-mounted fuel oil meters
305/Liquified Petroleum Gas Liquid-Measuring Devices	Truck-mounted liquid petroleum gas meters
None	Compressed natural gas meters

302/Retail Motor-Fuel Dispensers Retail motor fuel dispensers]
and Consoles

THE DEPARTMENT WILL PROVIDE A CURRENT LIST OF NIST TRAINING COURSES AND THE CATEGORY OR TYPE OF WEIGHING OR MEASURING DEVICE WITH RESPECT TO WHICH EACH COURSE IS APPLICABLE UPON REQUEST.

(c) **[Changes to] PUBLICATION OF list.** The Department will update or revise the list of [approved] NIST courses REFERENCED in subsection (b) by publishing notice describing this update or revision in the *Pennsylvania Bulletin*. The notice will include the course name and the category or type of weighing or measuring device, and indicate whether the course is being added or deleted.

(d) **Effect of addition of a course to list of [approved] courses.** If a course is added to the list described in subsection (c), a person who has successfully completed that course within 2 years prior to its inclusion on the list will be deemed to have completed the course requirement of the certification standards in § 4.5(1) (relating to certification standards).

§ 4.7. Audit by Department.

The Department may attend and audit an approved training course to ascertain whether the course is conducted in accordance with the requirements of the Act and in conformity to NIST standards or applicable standards of the Department and the program syllabus. A person offering or conducting an approved training course shall, at least 7 days in advance of conducting an approved training course, mail or deliver to the Department written notification of the date, time and location of the training course. A person offering or conducting an approved training course shall allow the Department's auditors entry to the program and provide copies of course materials.

§ 4.8. Applying for certification.

(a) **Application required.** A person who IS AT LEAST 18 YEARS OF AGE AND has successfully completed a training course prescribed by NIST and [approved by the Department in accordance with] DESCRIBED IN § 4.6 (relating to training courses) may apply to the Department for a CEWM certificate. Certification is granted through issuance of the certificate described in § 4.9 (relating to CEWM certificate).

(b) **Form of application.** A person seeking certification under the Act may obtain an application form from the Department at the address in § 2.2 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

(1) The name [and], mailing address AND BIRTH DATE of the person seeking a certificate.

(2) The name, location and date of completion of any approved training course completed by the person seeking a certificate.

(3) A copy of any certificate of completion with respect to the approved training course.

(4) The category or type of weighing or measuring device with respect to which the certificate is sought.

(5) A detailed description of the equipment the person seeking the CEWM Certificate will use in conducting inspections of the weighing or measuring devices of the category or type with respect to which certification is sought, with copies of applicable verifications of accuracy, inspection records and other documentation demonstrating the equipment is adequate and meets the requirements of § 6.3 (relating to field standards).

(6) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.

(7) The date of the application.

(8) Other information the Department might reasonably require.

(c) Departmental action on application. The Department will, within 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation. If the Department requests additional clarification or documentation, its review and consideration of the application will cease until the requested material is received, at which time the 30-day review period shall begin again.

§ 4.9. CEWM Certificate.

(a) Form of CEWM certificate. The Department will format the CEWM certificate into an identification card sized document, so it may be carried conveniently on a CEWM's person while performing inspections or tests under authority of that certificate.

(b) Contents of CEWM certificate. A CEWM certificate will bear the following information:

(1) The name of the person to whom it is issued.

(2) The category or type of weighing or measuring device with respect to which the person is certified.

(3) The expiration date of the certificate, which, in accordance with § 4.10 (relating to expiration of certificate), shall be 3 years from the date of issuance.

(4) A unique identification number.

(5) A photograph of the person to whom it is issued.

(6) A statement that the Department has determined the person identified on the certificate to be a "Certified Examiner of Weights and Measures" with respect to the category or type of weighing or measuring device identified on the certificate.

(7) Other information the Department might reasonably include.

(c) Ownership of CEWM certificate. A CEWM certificate issued by the Department will remain the property of the Department. A CEWM or other person having physical possession of a CEWM certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(d) Obligation to produce CEWM certificate for inspection. A CEWM shall have the CEWM certificate with him whenever performing inspections or tests under authority of that certificate, and shall produce the certificate for inspection upon demand by the Department or any person on whose behalf the CEWM is performing the inspection or test.

§ 4.10. Expiration of CEWM certificate.

A CEWM certificate will [expire no greater than 3 years from the date it is issued] BE VALID FOR THREE YEARS FROM THE DATE IT IS ISSUED, UNLESS IT IS SUSPENDED OR REVOKED EARLIER IN ACCORDANCE WITH THE PROCEDURES IN § 4.15 (RELATING TO SUSPENSION OR REVOCATION OF CERTIFICATION).

§ 4.11. Obtaining a new CEWM certificate.

(a) **No renewals: new certificate required.** The Department will not renew a CEWM certificate or extend the expiration date of a certificate. A person shall, instead, apply for and obtain a new CEWM certificate in accordance with § 4.8 (relating to applying for certification) to remain a CEWM.

(b) **Training course.** A person who is applying for certification applicable to a category or type of weighing or measuring device with respect to which the person is or has been a CEWM shall have successfully completed one of the following within 2 years of the date of the application form:

(1) A training course as described in § 4.6 (relating to training courses) applicable to that same category or type.

(2) A training course developed and approved by the Department applicable to that same category or type. The Department will publish a list of these approved training courses in the *Pennsylvania Bulletin*, and update this list to keep it current.

(c) **Timing of application.** A person may apply for a CEWM certificate at any time. A current CEWM who seeks to avoid any lapse in certification is encouraged to apply for certification at least 60 days in advance of the expiration date of his current certificate.

§ 4.12. Testing and inspection performance standards.

The Department [has adopted the] SHALL USE applicable NIST standards as [its] THE testing and inspection performance standards OF THE DEPARTMENT.

§ 4.13. Reporting procedures for CEWM.

(a) **Inspection report form required.** A CEWM shall prepare and submit to the Bureau an inspection report form, describing all of the weighing or measuring devices inspected at a particular location on a particular date.

(b) **Preparation and expense of acquiring forms.** The Department will provide a sample inspection report form upon the request of a CEWM. This sample form may be copied at the CEWM's expense.

(c) **Contents of inspection report form.** A completed inspection report form shall contain the following information:

(1) The printed name of the CEWM.

(2) The identification number of the CEWM. This number appears on the CEWM certificate.

(3) The date of the inspection.

(4) The location of the inspection.

(5) The category or type of each weighing or measuring devices inspected.

- (6) The manufacturer, model and serial number of each device inspected.
- (7) A description of any defects or deficiencies in the weighing or measuring device inspected, and whether they have been repaired or rectified.
- (8) A statement of whether the weighing or measuring device is in compliance with APPLICABLE NIST performance standards.
- (9) ANY COMMENTS OR EXPLANATIONS THE CEWM DEEMS NECESSARY FOR CLARITY.
- (10) The signature of the CEWM.

(d) Distribution of forms. A completed inspection report form shall be distributed as follows:

(1) The CEWM shall distribute the original of this form to the owner of the weighing or measuring device inspected, or to a responsible person at the site where the inspection occurred.

(2) The CEWM shall forward a copy of this form to the Department by mailing or delivering it to the Department by the 10th day of the month immediately following the month the inspection was conducted. Delivery may be accomplished by electronic means such as modem transmission/E-mail or facsimile transmission (FAX) machine. If delivery is accomplished by FAX machine, the CEWM shall retain the transmittal receipt as proof of compliance with this requirement.

(3) The CEWM shall retain a copy of this form and any transmittal receipt evidencing delivery of the form to the Department for at least three years from the date the testing and inspection services are performed.

(E) PROMPT REPORT OF INACCURATE DEVICES. IN ADDITION TO THE OTHER REPORTING REQUIREMENTS OF THIS SECTION, A CEWM SHALL PROMPTLY REPORT ANY COMMERCIALY USED WEIGHING AND MEASURING DEVICE THAT THE CEWM FINDS, UPON INSPECTION, DOES NOT CONFORM WITH APPLICABLE NIST PERFORMANCE STANDARDS OR IS OTHERWISE UNSUITABLE FOR COMMERCIAL USE. THIS REPORT SHALL PROVIDE THE LOCATION OF THE DEVICE, IDENTIFY THE DEVICE BY NAME, MODEL NUMBER AND SERIAL NUMBER, DESCRIBE THE DEFICIENCY AND STATE THE DATE AND TIME OF THE CEWM'S INSPECTION. THIS REPORT SHALL BE FAXED OR DELIVERED TO THE DEPARTMENT AT THE ADDRESS SET FORTH IN § 2.2 WITHIN 48 HOURS OF THE CEWM'S INSPECTION.

§ 4.14. Inspection and testing by the Department.

(a) Random inspection and testing. In accordance with section 4110 of the act (relating to specific powers and duties of the department; regulations), the Department will conduct random inspection and testing of a sample of devices that have been inspected and tested by a CEWM to determine whether the CEWM conducted the inspection and testing in accordance with the act and this chapter. THIS RANDOM INSPECTION AND TESTING WILL INCLUDE A REPRESENTATIVE SAMPLE OF EACH OF THE TYPES OF WEIGHING AND MEASURING DEVICES LISTED IN § 4.4 (RELATING TO CATEGORIES AND TYPES OF WEIGHING AND MEASURING DEVICES WHICH A CEWM MAY INSPECT).

(b) Inspections generally. In addition to the random inspection and testing described in subsection (a), the Department may conduct inspection and testing of any device that has been inspected and tested by a CEWM.

(c) Time lapse affecting results. In evaluating the inspection and testing performed by the CEWM, the Department will take into account any lapse of time between an inspection performed by the Department and the inspection performed by the CEWM.

(d) Reporting of results. Within 30 days following a random inspection, the Department will mail the CEWM written notice of the inspection and the results of that inspection.

(e) Use of results. The Department may use the results of its inspection and testing to suspend or revoke the certificate of a CEWM in accordance with § 4.15 (relating to suspension or revocation of certification), or as the basis for a warning or instruction directed to the CEWM.

§ 4.15. Suspension or revocation of certification.

(a) Basis for action. The Department may suspend or revoke a CEWM Certificate if the certificate holder does one or more of the following:

- (1) Violates a provision of this chapter.
- (2) Violates a provision of the Act.
- (3) Violates an applicable NIST standard, unless that standard is inconsistent with the act or this chapter.
- (4) Intentionally or fraudulently reports inaccurate information on an inspection report form.
- (5) Is found, following inspection and testing by the Department in accordance with § 4.14 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed testing and inspections of the category or type of weighing or measuring device with respect to which the certificate was issued.

(b) Notice. The Department will provide a CEWM with written notice of its intention to suspend or revoke certification, which will afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) Delivery of notice. The Department will deliver the notice described in subsection (b) to the affected certificate holder by personal service or by regular mail to the address provided by the certificate holder on his application for certificate under § 4.8 (relating to applying for certification), or to the address most recently provided to the Department in writing by the CEWM as the address to which notices should be sent.

§ 4.16. CEWM list.

(a) CEWM list to be maintained. The Department will maintain a current CEWM list containing the following information with respect to each CEWM:

- (1) Name and address.
- (2) Telephone number.
- (3) Fax number (if available).

(4) Each category or type of weighing or measuring device with respect to which the CEWM is certified.

(5) The expiration date of certification.

(6) The unique identification number of the CEWM's certificate.

(b) Distribution of copies. The Department will provide a copy of the current CEWM list upon request.

§ 4.17. Civil penalties.

(a) General. The Department may assess a civil penalty of up to \$10,000 against any person that violates a provision of the act or this chapter. In determining the amount of a civil penalty, the Department will consider the gravity of the violation.

(b) Notice. The Department will provide a person written notice of any violation of the act or this chapter and an opportunity for an administrative hearing on the violation prior to the imposition of a civil penalty.

(c) Warning. If the Department determines a violation did not cause harm to the public interest, the Department may issue a warning in lieu of assessing a civil penalty.

CHAPTER 5. UPC SCANNING SYSTEMS AND PLU DEVICES

GENERAL

Sec.

- 5.1. Purpose.
- 5.2. Requirement of annual testing and inspection.
- 5.3. Testing and inspection standards.
- 5.4. Certified UPC/PLU inspector.
- 5.5. Authority of Certified UPC/PLU inspector
- 5.6. Certification requirements.
- 5.7. Training courses.
- 5.8. Applying for certification.
- 5.9. UPC/PLU inspector's certificate.
- 5.10. Expiration of UPC/PLU inspector's certificate.
- 5.11. Obtaining a new UPC/PLU inspector's certificate.
- 5.12. Inspections: reporting procedures.
- 5.13. Inspections: enforcement levels.
- 5.14. Inspection and testing by the Department.
- 5.15. Suspension or revocation of certification.
- 5.16. Certified UPC/PLU inspector list.

PRIVATE CERTIFICATION PROGRAMS

- 5.21. Registration.
- 5.22. [Private certification programs:] Requirements and fees.
- 5.23. Program list.

§ 5.1. Purpose.

Section 4112(c) of the act (relating to general testing and inspections) requires the inspection of all commercially used UPC scanning systems and PLU devices within the Commonwealth by June 30, 1999, and thereafter at intervals of no greater than 12 months. It is the purpose of this chapter to accomplish the following:

(1) Establish the Department's specifications, tolerances and procedures with respect to the inspection of UPC scanning systems and PLU devices, and supplant Chapter 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices – statement of policy) as authorized in section 4112(d) of the act.

(2) Identify the minimum level of training necessary for a person to be qualified to inspect UPC scanning systems and PLU devices.

(3) Establish a procedure by which a person may apply to the Department to become a Certified UPC/PLU Inspector.

(4) Prescribe a procedure under which the Department can review inspections performed by certain certified UPC/PLU inspectors and revoke or suspend certification.

(5) Establish minimum requirements for the "private certification programs" referenced in section 4112(c) of the act.

(6) Otherwise comply with the requirements of section [4112(c)] 4112(d) of the act.

§ 5.2. Requirement of annual testing and inspection.

(a) General requirement. The Department will, by June 30, 1999 and within every 12-month period thereafter, inspect and test each commercially used UPC scanning system and PLU device in the Commonwealth to ascertain if it is correct, unless the system or device is inspected by a city or county sealer, as described in subsection (b), or the system or device is exempt from inspection, as described in subsection (c).

(b) Delegation of inspection responsibilities. The Department may assign responsibility for conducting the testing and inspections described in subsection (a) to a city or county by a memorandum of understanding between the Department and the city or county entered into in accordance with section 4125 of the act (relating to division of responsibilities).

(c) Exemption for UPC scanning systems and PLU devices inspected by a private certification program. A commercially used UPC scanning system or PLU device shall be exempt from the annual testing and inspection described in subsection (a) if all of the following [apply] OCCUR:

(1) The system or device is inspected at intervals of no greater than one year.

(2) The inspection is unannounced.

(3) The inspection is conducted as part of a private certification program.

(4) The private certification program has registered with the Department in accordance with [§ 5.17 (relating to private certification programs: registration)] § 5.21 (RELATING TO REGISTRATION).

(5) The certified UPC/PLU inspector conducting the inspection on behalf of the private certification program files a price verification inspection report with

the Department in accordance with the procedure described at § 5.12 (relating to inspections: reporting procedures).

(6) The private certification program meets the requirements of this chapter.

§ 5.3. Testing and inspection standards.

(a) **Standards.** The "Examination Procedures for Price Verification" adopted by NCWM in Publication No. 19 (August 1995), or any subsequent amendment thereof, are hereby adopted as the specifications and tolerances of the Department with respect to commercially used UPC scanning systems and PLU devices.

EXAMPLE: A certified UPC/PLU inspector shall evaluate "errors" and the "accuracy" of UPC scanning systems and PLU devices in accordance with the "Examination Procedure for Price Verification" in NCWM Publication No. 19 (August 1995), which requires that a UPC scanning system or PLU device have an accuracy rate of 98% or higher to "pass" an inspection.

EXAMPLE: A certified UPC/PLU inspector shall verify the price of sale items by allowing the sales clerk to determine the price of the item using the store's customary procedures, including manually entering discounts, in accordance with Paragraph 7.3, Note 3, of the "Examination Procedure for Price Verification" [set forth] in NCWM Publication No. 19 (August 1995).

(b) **Applicability.** The standards described in subsection (a) will be used by any person conducting testing and inspection of a commercially used UPC scanning system or PLU device in the capacity of a certified UPC/PLU inspector.

(c) **Obtaining Publication No. 19.** The Department will provide a copy of NCWM Publication No. 19 (August 1995), or any subsequent amendment thereof, at cost to any person requesting a copy.

§ 5.4. Certified UPC/PLU Inspector.

A person [shall] **MUST** be a certified PLU/UPC inspector to conduct an inspection of a commercially used UPC scanning system or PLU device described in section 4112(c) of the act (relating to general testing and inspections), regardless of whether the inspection is performed by a State inspector of weights and measures, an employee of a city or county acting in accordance with a memorandum of understanding entered into with the Department, or a person acting as part of a private certification program. A person may apply to the Department to become a certified UPC/PLU inspector.

§ 5.5. Authority of a certified UPC/PLU inspector.

(a) **General.** A certified UPC/PLU inspector is qualified to perform the annual testing and inspection of any commercially used UPC scanning system or PLU device which is required under section 4112(c) of the act (relating to general testing and inspections). **A CERTIFIED UPC/PLU INSPECTOR – INCLUDING A CERTIFIED UPC/PLU INSPECTOR ACTING AS PART OF A PRIVATE CERTIFICATION PROGRAM - MAY INSPECT UPC SCANNING SYSTEMS OR PLU DEVICES OWNED, USED OR LEASED BY A PERSON WITH RESPECT TO WHICH THE CERTIFIED UPC/PLU INSPECTOR IS AN EMPLOYEE OR AGENT IF THE**

INSPECTION IS CONDUCTED ON AN UNANNOUNCED BASIS IN ACCORDANCE WITH § 4112(c) OF THE ACT.

(b) Limitation on authority. A certified UPC/PLU inspector may exercise his authority only in one of the following contexts:

(1) The certified UPC/PLU inspector is a State inspector of weights and measures.

(2) The certified UPC/PLU inspector is an employee of a city or county, and is acting in accordance with a memorandum of understanding entered into with the Department in accordance with section 4125 of the act (relating to division of responsibilities).

(3) The certified UPC/PLU inspector is acting as part of a private certification program.

(c) Fees. A certified UPC/PLU inspector may not charge a fee for inspection and testing services, unless that person is acting as part of a private certification program, OR THAT PERSON IS AN EMPLOYEE OF A CITY OR COUNTY AND IS ACTING IN ACCORDANCE WITH A MEMORANDUM OF UNDERSTANDING ENTERED INTO WITH THE DEPARTMENT IN ACCORDANCE WITH SECTION 4125 OF THE ACT.

§ 5.6. Certification requirements.

(a) General. A person seeking to become a certified UPC/PLU inspector shall do the following:

(1) Successfully complete a training course in examination procedures for price verification as adopted by NIST/NCWM, and as described in § 5.7 (relating to training courses).

(2) Comply with the application requirements and other requirements of this chapter.

(b) Persons certified under interim guidelines. A UPC/PLU inspector's certificate issued in accordance with Chapter 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices – statement of policy) authorized by section 4112(d) of the act (relating to general testing and inspections) shall be considered a UPC/PLU inspector's certificate issued under this Chapter.

§ 5.7. Training courses.

(a) General approval of NIST/NCWM training courses. The Department hereby approves any NIST/NCWM price verification training course utilizing the "Examination Procedure for Price Verification" set forth in NCWM Publication No. 19 (August, 1995), or any subsequent successor publication thereto, as an approved training course for certified UPC/PLU inspector candidates.

(b) Current approved NIST/NCWM training courses. The current approved NIST/NCWM training courses are the "NIST/NCWM Price Verification Training" course and the "NIST/NCWM Price Verification Instructor's Training" course. An approved training course may be conducted by any person who has successfully completed the NIST/NCWM price verification instructor's training course.

(c) New or additional training courses. The Department will update or revise the list of approved NIST/NCWM training courses in subsection (b) by publishing notice describing this update or revision in the *Pennsylvania Bulletin*.

(d) Effect of addition of a course to list of approved courses. If the Department approves a new or additional training course for certified UPC/PLU inspector candidates, a person who has successfully completed that course within 2 years prior to its approval will be deemed to have completed an approved course.

§ 5.8. Applying for certification.

(a) Application required. A person who IS AT LEAST 18 YEARS OF AGE AND has successfully completed an approved training course (as described in the preceding section) within 2 years of the date of application may apply to be certified as a UPC/PLU inspector. Certification is granted through issuance of the certificate described at § 5.9 (relating to UPC/PLU inspector's certificate).

(b) Form of application. A person seeking to become a certified UPC/PLU inspector may obtain an application form from the Department at the address in § 2.2 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

(1) The name [and], mailing address AND BIRTH DATE of the person seeking a UPC/PLU inspector's certificate.

(2) Whether the applicant seeks to conduct UPC/PLU inspections as a State inspector of weights and measures, an employee of a city or county acting in accordance with a memorandum of understanding with the Department or as part of a private certification program.

(3) The name, location and date of completion of any approved training course completed by the person seeking a UPC/PLU inspector's certificate.

(4) A copy of any certificate of completion with respect to the approved training course.

(5) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.

(6) The date of the application.

(7) Other information the Department might reasonably require TO DETERMINE ELIGIBILITY FOR CERTIFICATION.

(c) Departmental action on application. The Department will, within 30 days of receiving an application, mail the applicant a UPC/PLU inspector's certificate, a disapproval notice or a request for additional clarification or documentation. If the Department requests additional clarification or documentation, its review and consideration of the application will cease until the requested material is received, at which time the 30-day review period will begin again.

§ 5.9. UPC/PLU inspector's certificate.

(a) Form of certificate. The Department will format the UPC/PLU inspector's certificate into an identification card sized document, so it may be carried conveniently on a certified UPC/PLU inspector's person while performing inspections or tests under authority of that certificate.

(b) Contents of UPC/PLU inspector's certificate. A UPC/PLU inspector's certificate will bear the following information:

- (1) The name of the person to whom it is issued.
- (2) The expiration date of the certificate, which, in accordance with § 5.10 (relating to expiration of UPC/PLU Inspector's certificate), shall be 3 years from the date of issuance.
- (3) A unique identification number.
- (4) A photograph of the person to whom it is issued.
- (5) A statement that the Department has determined the person identified on the certificate to be a "certified UPC/PLU inspector" in accordance with section 4112 of the act (relating to general testing and inspections).
- (6) Other information the Department might reasonably include.

(c) Ownership of UPC/PLU inspector's certificate. A certificate issued by the Department will remain the property of the Department. A certified UPC/PLU inspector or other person having physical possession of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(d) Obligation to produce certificate for inspection. A certified UPC/PLU inspector shall have his UPC/PLU inspector's certificate with him whenever performing inspections or tests under authority of that certificate, and shall produce the certificate for inspection upon demand by the Department or any person on whose behalf the certified UPC/PLU inspector is performing the inspection or test.

§ 5.10. Expiration of UPC/PLU inspector's certificate.

A UPC/PLU inspector's certificate will [expire no greater than 3 years from the date it is issued] BE VALID FOR THREE YEARS FROM THE DATE IT IS ISSUED, UNLESS IT IS SUSPENDED OR REVOKED EARLIER IN ACCORDANCE WITH THE PROCEDURES IN § 5.15 (RELATING TO SUSPENSION OR REVOCATION OF CERTIFICATION).

§ 5.11. Obtaining a new UPC/PLU inspector's certificate.

(a) No renewals: New certificate required. The Department will not renew a UPC/PLU inspector's certificate or extend the expiration date of a certificate. A person shall, instead, apply for and obtain a new certificate in accordance with § 5.8 (relating to applying for certification) in order to remain a certified UPC/PLU inspector.

(b) Training course. A person who is applying for certification shall have successfully completed an approved training course as described in § 5.7 (relating to training courses) within 2 years of the date of the application form.

(c) Timing of application. A person may apply for certification at any time. A current certified UPC/PLU inspector who seeks to avoid any lapse in certification is encouraged to apply for a new UPC/PLU inspector's certificate at least 60 days in advance of the expiration date of the current certificate.

§ 5.12. Inspections: reporting procedures.

(a) Inspection report form required. A certified UPC/PLU inspector shall prepare and submit to the Bureau a price verification inspection report form with respect

to any inspection the certified UPC/PLU inspector conducts. A copy of this price verification inspection form is set forth in Appendix "A". The form is substantively identical to the "Appendix A Model Form - Price Verification Report" form set forth in NCWM's Examination Procedure for Price Verification.

(b) Acquiring forms. The Department will provide a sample price verification inspection report form upon the request of a certified UPC/PLU inspector. This sample form may be copied at the certified UPC/PLU inspector's expense.

(c) Distribution of forms. A completed price verification inspection report form shall be distributed as follows:

(1) The certified UPC/PLU inspector shall distribute the original of this form to the owner of the systems and devices inspected, or to a responsible person at the site where the inspection occurred.

(2) The certified UPC/PLU inspector shall forward a copy of this form to the Department by mailing or delivering it to the Department by the 10th day of the month immediately following the month the inspection was conducted. Delivery may be accomplished by electronic means such as modem transmission/E-mail or facsimile transmission machine. If delivery is accomplished by facsimile machine, the certified UPC/PLU inspector shall retain the transmittal receipt as proof of compliance with this requirement.

(3) The certified UPC/PLU inspector shall retain a copy of this form and any transmittal receipt evidencing delivery of the form to the Department for at least three years from the date the testing and inspection services are performed.

§ 5.13. Inspections: enforcement levels.

The "Model Enforcement Levels" in Section 11, Paragraph 11.2 of NCWM's Examination Procedure for Price Verification, or any subsequent revision thereto, are hereby adopted as the enforcement levels to be applied by the Department and certified UPC/PLU inspectors.

§ 5.14. Inspection and testing by the Department.

(a) Inspections generally. The Department may evaluate the performance of a certified UPC/PLU inspector who conducts inspections for a private certification program by conducting a follow-up inspection of any UPC scanning system or PLU device that has been inspected and tested by such a certified UPC/PLU inspector.

(b) Time lapse and other factors effecting results. In evaluating the inspection and testing performed by a certified UPC/PLU inspector as described in subsection (a), the Department will consider any factor that might reasonably account for a variance between the Department's inspection results and those of the certified UPC/PLU inspector, including a lapse of time between an inspection performed by the Department and the inspection performed by the certified UPC/PLU inspector.

(c) Reporting of results. Within 30 days following a follow-up inspection, the Department will mail the certified UPC/PLU inspector written notice of the DEPARTMENT'S inspection and the results of that inspection.

(d) Use of results. The Department may use the results of its follow-up inspection to suspend or revoke a UPC/PLU inspector's certificate, as described in subsection (a), in accordance with § 5.15 (relating to suspension or revocation of

certification), or as the basis for a warning or instruction directed to the certified UPC/PLU inspector.

§ 5.15. Suspension or revocation of certification.

(a) **Basis for action.** The Department may suspend or revoke a UPC/PLU inspector's certificate if the certificate holder conducts inspections for a private certification program and does one or more of the following:

- (1) Violates any provision of this chapter.
- (2) Violates any provision of the act.
- (3) Violates an applicable standard prescribed by NCWM's Examination Procedure for Price Verification, unless that standard is inconsistent with the act or this chapter.
- (4) Intentionally or fraudulently reports inaccurate information on a price verification inspection report form.
- (5) Is found, following inspection and testing by the Department in accordance with § 5.14 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed an inspection of a UPC scanning system or PLU device.

(b) **Notice.** The Department will provide a certified UPC/PLU inspector with written notice of its intention to suspend or revoke certification, which will afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) **Delivery of notice.** The Department will deliver the notice described in subsection (b) to the affected certified UPC/PLU inspector by personal service or by regular mail to the address provided by the certified UPC/PLU inspector on the most recent application for a certificate, or to the address most recently provided to the Department in writing by the certified UPC/PLU inspector as the address to which notices should be sent.

§ 5.16. Certified UPC/PLU inspector list.

(a) **List to be maintained.** The Department will maintain a current list containing the following information with respect to each certified UPC/PLU inspector:

- (1) The name and address.
- (2) The telephone number.
- (3) The facsimile number, if available.
- (4) The expiration date of certification.
- (5) The unique identification number of the UPC/PLU inspector's certificate.

(b) **Distribution of copies.** The Department will provide a copy of the current certified UPC/PLU inspector list upon request.

PRIVATE CERTIFICATION PROGRAMS

§ 5.21. Registration.

(a) **General requirement.** A person who owns or operates a commercially used UPC scanning system or PLU device may avoid the requirement of annual State or local

inspection described in section 4112(c) of the act (relating to general testing and inspections) by having the inspection performed by a private certification program. A private certification program shall meet the requirements of this chapter and shall, prior to commencing testing and inspection of commercially used UPC scanning systems or PLU devices, file a written statement with the Department, at the address in § 2.2 (relating to contacting the Department).

(b) Contents of written statement. The written statement referenced in subsection (a) shall contain the following:

(1) The name, business address and telephone number of the private certification program.

(2) The name of any certified UPC/PLU inspector who will be conducting UPC scanning system or PLU device inspections on behalf of the private certification program, together with the unique identification number appearing on that person's UPC/PLU inspector's certificate.

(3) The signature, printed name and title of the person making the statement.

(c) Action by Department. Within 30 days of receiving a written statement as described in subsection (b), the Department will mail the applicant a copy of the written statement bearing a legible stamp or seal indicating the original document has been filed with the Department.

(d) Updating the written statement. A private certification program shall, within 30 days of a change affecting the accuracy of a written statement it has filed with the Department, provide the Department an update of its written statement.

§ 5.22. [Private certification programs:] Requirements and fees.

(a) Unannounced inspections required. A certified UPC/PLU inspector conducting an inspection on behalf of a private certification program shall conduct that inspection on an unannounced basis.

(b) Fees permitted. A private certification program may charge a fee for its services - whether a per-inspection fee, a flat annual fee, a membership fee in an organization that conducts a private certification program for its members, or some other fee arrangement.

§ 5.23. Program list.

(a) List to be maintained. The Department will maintain a current list of private certification programs. The list will contain the name, business address, telephone number and facsimile number (if available) of each private certification program.

(b) Distribution of copies. The Department will provide a copy of the current private certification program list upon request.

CHAPTER 6. REGISTRATION OF SELLERS, INSTALLERS AND REPAIRERS OF WEIGHING AND MEASURING DEVICES

Sec.

6.1. Purpose.

- 6.2. Registration requirement.
- 6.3. Field standards.
- 6.4. Registration procedure.
- 6.5. Registration card.
- 6.6. Newly-installed or repaired commercial weighing and measuring devices.
- 6.7. Expiration/renewal of registration.

§ 6.1. Purpose.

This chapter establishes the program referenced in section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices), under which INDIVIDUAL persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices shall register with the Department, maintain field standards that adequately test weighing and measuring devices being placed into commercial service and provide the Department notice of newly-installed commercial weighing and measuring devices. FOR PURPOSES OF THIS CHAPTER, "INDIVIDUAL PERSONS" ARE NATURAL PERSONS AND NOT CORPORATIONS, PARTNERSHIPS OR OTHER BUSINESS ENTITIES.

§ 6.2. Registration requirement.

(a) General registration requirement. [A person who is engaged in the business of selling, installing, servicing or repairing commercially used weighing and measuring devices shall maintain a current registration with the Department, as described in § 6.4 (relating to registration procedure)] AN INDIVIDUAL PERSON SHALL NOT ACT AS A SELLER, INSTALLER, SERVICER OR REPAIRER OF COMMERCIALY USED WEIGHING AND MEASURING DEVICES IN THE COMMONWEALTH UNLESS THE PERSON FIRST REGISTERS WITH THE DEPARTMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER AND OBTAINS THE REGISTRATION CARD DESCRIBED IN § 6.5 (RELATING TO REGISTRATION CARD).

(b) Exception. The registration requirement established in subsection (a) is not applicable in instances when the commercially used weighing and measuring device being sold, installed, serviced or repaired is a UPC scanning system, a PLU device or a component of either system or device.

§ 6.3. Field standards.

(a) General requirement. [A] AN INDIVIDUAL person who is EMPLOYED OR engaged in the business of installing, servicing or repairing commercially used weighing and measuring devices shall have, maintain and use field standards that are adequate to test and place weighing and measuring devices into commercial service, and otherwise meet the requirements of NIST Handbook 44, or any subsequent amendment thereof.

(b) Adequate field standards. For purposes of this chapter, field standards will not be considered adequate for use in placing commercially used weighing and measuring devices into service unless there exists a [current] verification of accuracy issued by the State Metrology Laboratory with respect to those field standards, AND THE

VERIFICATION OF ACCURACY WAS ISSUED WITHIN ONE YEAR PRECEEDING USE OF THE FIELD STANDARDS. This verification of accuracy may take the form of a "Report of Test for Weights and Measures Standards" or a similar document.

§ 6.4. Registration procedure.

(a) Filing of registration form required. [A] AN INDIVIDUAL person who is EMPLOYED OR engaged in the business of selling, installing, servicing or repairing commercially used weighing or measuring devices shall submit a complete registration form to the Department, unless the commercially used weighing and measuring device being sold, installed, serviced or repaired is a UPC scanning system, a PLU device or a component of either system or device.

(b) Registration form. [A] AN INDIVIDUAL person seeking to register with the Department under this chapter may obtain a registration form from the Department at the address in § 2.2 (relating to contacting the Department). The prospective registrant shall complete the form and return it to that same address. The registration form shall require the following information:

(1) The name and mailing address of the person seeking to register with the Department.

(2) A designation of whether the person seeking to register with the Department is a seller, installer, servicer or repairer of commercially used weighing and measuring devices.

(3) The name and address of any business through which the person seeking to register with the Department is employed as a seller, installer, servicer or repairer of commercially used weighing or measuring devices.

(4) A designation of the category or type of weighing or measuring device sold, installed, serviced or repaired by the person seeking to register with the Department.

(5) If the person seeking to register with the Department is an installer, servicer or repairer of commercially used weighing or measuring devices, a copy of the current verification from the State Metrology Laboratory that the field standards used by that person are accurate.

(6) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.

(7) The date of the application.

(8) The signature of the person seeking to register with the Department.

(9) Other information the Department might reasonably require FOR

REGISTRATION.

(c) Departmental action on registration form. The Department will, within 30 days of receiving a complete registration form, mail the person who filed the registration form a registration card. If the registration form is incomplete, illegible or otherwise deficient, the Department will notify the person who filed the registration form, in writing, of the problem and the action required to resolve it. If the Department notifies a person who filed a registration form of some deficiency, its review and consideration of the registration form will cease until the deficiency is corrected, at which time the 30-day review period shall begin again.

§ 6.5. Registration card.

(a) Form of registration card. The Department will provide a registrant under this chapter a registration card that may be carried conveniently on a registrant's person.

(b) Contents of registration card. A registration card will bear the following information:

- (1) The name of the person to whom it is issued.
- (2) The category or type of weighing or measuring device with respect to which the person is registered.
- (3) The effective date of registration.
- (4) The maximum expiration date of the registration, which, in accordance with § 6.6 (relating to expiration/renewal of registration), is 3 years from the date of registration.
- (5) A unique identification number.
- (6) A photograph of the person to whom it is issued.
- (7) A statement that the person identified on the registration card has registered with the Department in accordance with section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices).
- (8) Other information the Department might reasonably include ON THE REGISTRATION CARD.

(c) Ownership of registration card. A registration card issued by the Department will remain the property of the Department. A registrant or other person having physical possession of the registration card shall, upon written notice from the Department, surrender and return the registration card to the Department.

(d) Obligation to produce registration card for inspection. A registrant under this chapter shall [have his registration card with him] POSSESS THE REGISTRATION CARD whenever selling, installing, servicing or repairing a commercially used weighing or measuring device.

§ 6.6. Newly-installed or repaired commercial weighing and measuring devices.

(a) Inspection required. A newly-installed or repaired commercial weighing or measuring device, other than a UPC scanning system or PLU device, shall not be used in commerce unless it has been inspected and sealed in accordance with the provisions of the act and this part, or unless use in commerce occurs during a period of conditional short-term use as described in subsection (d).

(b) Responsibilities of installer or repairer. A registrant under this chapter shall promptly notify the Department of any commercial weighing or measuring device it installs or repairs. Although the initial notification may be made by telephone, written notice shall be mailed, faxed or delivered to the Department within 48 hours of the installation or repair. The written notice shall provide the following with respect to the device:

- (1) The location of the newly-installed or repaired device, the date of the installation or repair and a statement of whether the device is a newly-installed device or a repaired device.
- (2) The manufacturer's name or brand name.

- (3) The model number listed on the device.
- (4) The capacity of the device, if applicable.
- (5) The serial number of the device.
- (6) The category or type of weighing or measuring device to which the newly-installed or repaired device belongs.
- (7) The name and telephone number of a contact person through which the Department, a county sealer or a city sealer may arrange an inspection of the device.

(c) Responsibilities of inspector.

(1) State inspectors. If the Department has not delegated inspection responsibility to a county sealer or city sealer, it will inspect the newly-installed or repaired weighing or measuring device at the earliest date practicable, but within 15 days of the installation or repair, and affix a seal (as required) if the device meets the requirements of the Act and this part.

(2) County sealers and city sealers. If the Department has delegated this inspection responsibility to a county sealer or city sealer, it will promptly notify the sealer of the installation or repair and the sealer shall inspect the newly-installed or repaired weighing or measuring device at the earliest date practicable, but within 15 days of the installation or repair, and affix a seal (as required) if the device meets the requirements of the act and this part.

(d) Conditional short-term use. If the installer has fulfilled the responsibilities described in subsection (b), an uninspected, newly-installed or repaired commercial weighing or measuring device may be used in commerce for a period of no more than 15 days from the date of installation or repair. If, for any reason, the inspection referenced in subsection (c) is not accomplished during this 15-day period of conditional short-term use, the device will be removed from commercial use until the inspection is completed AND THE DEPARTMENT IS NOTIFIED OF THE COMPLETED INSPECTION.

§ 6.7. Expiration/renewal of registration.

If a person is registered under this chapter, registration shall expire 3 years from the date the registration card is issued. If, as a condition of registration in accordance with § 6.4(b)(5) (relating to registration procedure), the registrant was required to submit a copy of the current verification from the State Metrology Laboratory that the field standards used by that person are accurate, registration shall expire as of the expiration of that verification. Registration may be renewed by following the registration procedure set forth at § 6.4 (relating to registration procedure).

**CHAPTER 7. REGISTRATION AND REPORT OF INSPECTION OF
COMMERCIAL WEIGHING AND MEASURING DEVICES**

- Sec.
- 7.1. Purpose.
- 7.2. Weighing and measuring devices affected.
- 7.3. Requirement: registration of devices by owners.
- 7.4. Report by inspectors.

7.5. Registration process.

§ 7.1. Purpose.

This chapter is intended to establish the program described in section 4114 of the act (relating to registration and report of inspection and testing of weighing and measuring devices used for commercial purposes), requiring the registration and reporting of inspection and testing of those commercially used weighing and measuring devices required to be tested and inspected in accordance with section 4112 of the act (relating to general testing and inspections).

§ 7.2. Weighing and measuring devices affected.

The requirements of this chapter apply to the following:

(1) Weights and measures used in determining the weight, measurement or count of commodities or things sold, offered or exposed for sale on the basis of weight, measure or count.

(2) Weights and measures used in computing the basic charge for services rendered on the basis of weight, measure or count or of devices used to dispense services on time.

(3) Commercially used small capacity retail computing scales, retail package shipping scales, vehicle scales, small platform scales which weigh items to 1,000 pounds, truck-mounted fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers.

(4) Commercially used UPC scanning systems and PLU devices.

§ 7.3. Requirement: Registration of devices by owners.

(a) **Owners required to register.** The owner of any weighing or measuring device described in § 7.2 (relating to weighing and measuring devices affected) shall register the device with the Department in accordance with the procedure in § 7.5 (relating to registration process).

(b) **Exception: Certain establishments engaged in the retail sale of gasoline.** Subsection (a) notwithstanding, an establishment involved in the retail sale of gasoline for use in the fuel supply tanks of motor vehicles, which is required to obtain an annual liquid fuels permit from the Department of Revenue in accordance with 75 Pa.C.S. Chapter 90 (relating to Liquid Fuels and Fuels Tax Act), shall be exempt from the registration requirement.

(C) OWNERS REQUIRED TO REPORT REGISTERED DEVICES THAT ARE SUBSEQUENTLY REMOVED FROM COMMERCIAL USE; EXCEPTION. THE OWNER OF ANY WEIGHING AND MEASURING DEVICE REGISTERED WITH THE DEPARTMENT IN ACCORDANCE WITH THIS CHAPTER SHALL REPORT THE REMOVAL OF THAT DEVICE FROM COMMERCIAL USE WITHIN 30 DAYS OF ANY SUCH REMOVAL. THE REPORT SHALL BE IN WRITING, AND SHALL CLEARLY IDENTIFY THE DEVICE AND THE LOCATION WITH RESPECT TO WHICH IT WAS REGISTERED. THE REPORT SHALL BE DIRECTED TO THE DEPARTMENT, AT THE ADDRESS SET FORTH IN § 2.2.

§ 7.4. Report by inspectors.

(a) City or county sealer. A city or county sealer who tests or inspects a weight or measure described in § 7.2(1) or (2) (relating to weighing and measuring devices affected), in accordance with section 4112 of the act (relating to general testing and inspections), and under a memorandum of understanding with the Department, shall submit a monthly written report to the Department. This written report shall be submitted to the Department by the 15th day of each month, and shall describe the following with respect to work performed in the preceding month:

(1) A summary of the work performed.

(2) A description of the weights, measures and weighing and measuring devices inspected or tested, THE DATE OF THE INSPECTION OR TEST and the results of the inspection or test.

(3) A description of the nature and result of all criminal prosecutions of violations of the act or this chapter.

(b) CEWM. A CEWM who tests and inspects a weighing or measuring device described at § 7.2(3) in accordance with § 4112(b) of the act shall report the inspection to the Department in the manner set forth at § 4.13 (relating to reporting procedures for certified examiners of weights and measures).

(c) Certified UPC/PLU inspector. A certified UPC/PLU inspector who tests and inspects a UPC scanning system or PLU device described at § 7.2(4) in accordance with section 4112(c) of the act shall report the inspection to the Department in the manner in § 5.12 (relating to inspections: reporting procedures).

§ 7.5. Registration process.

(A) PERSONS REQUIRED TO REGISTER COMMERCIALY USED WEIGHING AND MEASURING DEVICES. THE OWNER OF ANY WEIGHING OR MEASURING DEVICE DESCRIBED IN § 7.2 SHALL REGISTER THE DEVICE WITH THE DEPARTMENT IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN THIS SECTION.

[(a)] (B) Obtaining a registration form. The Department will provide [a] AN APPROVED weighing or measuring device registration form upon request. The form will be formatted so that multiple devices can be registered using a single form. In lieu of the form provided by the Department, a person may use a form of his own construction, as long as the information set forth in subsection [(b)] (C) appears in a legible and understandable fashion on the document.

[(b)] (C) Required information.

(1) Information to be included. A weighing or measuring device registration form shall require the following information:

(i) The name and address of the person registering the device.

(ii) The location of the device.

(iii) The manufacturer's name or brand name.

(iv) The model number listed on the device.

(v) The capacity of the device, if applicable.

(vi) The serial number of the device.

(vii) The category or type of weighing or measuring device to which the newly-installed device belongs.

(2) Exception. If the weighing or measuring device being registered is a UPC scanning system or PLU device, the registrant may provide the information required under paragraph (1)(i) and (ii), and provide a general description of the various components of the system or device rather than the information required under paragraphs (1)(iii)-(vii).

[(c)] (D) Time for filing the form.

(1) General. A person required to file a registration form shall do so within 30 days of the installation of a weighing or measuring device with respect to which registration is required, unless the registrant belongs within one of the categories of registrant described in paragraphs (2), (3) or (4).

(2) Food establishments. A food establishment shall register its weighing and measuring devices at the same time it submits its annual registration to the Department under the Food Act.

(3) Public eating and drinking places. A public eating and drinking place shall register its weighing and measuring devices at the time it submits its annual license fee under the Public Eating and Drinking Place Law.

(4) Commercial feed facilities. A commercial feed facility shall register its weighing and measuring devices at the time it submits its annual license fee under section 5103 of the [act] COMMERCIAL FEED ACT (3 PA.C.S. § 5103) (RELATING TO LICENSING).

[(d)] (E) Action by Department. The Department will review each registration form it receives under this chapter and, within 30 days of receiving the form, mail the registrant a registration document or a written request for clarification of any inaccurate or illegible material set forth on the form. If the Department requests additional clarification, its review and consideration of the registration form will cease until the requested clarification is received, at which time the 30-day review period shall begin again.

[(e)] (F) Registration document. The registration document shall be in the form of a letter from the Director appended to a copy of the registration form. Registration shall remain valid until the registered device is moved to a new location.

CHAPTER 8. TRAINING PROGRAM FOR INSPECTORS AND SEALERS

Sec.

- 8.1. Purpose.
- 8.2. General adoption of NIST training program.
- 8.3. Training AND CERTIFICATION with respect to individual types of weighing and measuring devices.
- 8.4. Prior training.
- 8.5. Supplemental or refresher training.

§ 8.1. Purpose.

This chapter is intended to establish the minimum training requirements for State inspectors, county sealers and city sealers, under section 4115 of the act (relating to training program).

§ 8.2. General adoption of NIST training program.

(a) **General.** The training program prescribed by NIST for inspectors and sealers of weights and measures is hereby adopted as the minimum training requirement for State inspectors, county sealers and city sealers under the act and this title.

(b) **NIST training course 102.** As of January 1, 2000, a State inspector, county sealer or city sealer must successfully complete NIST training course 102, entitled "Introduction to Handbook 44", or any successor course thereto, in order to meet the minimum training requirements of the act and this chapter.

§ 8.3. Training AND CERTIFICATION with respect to individual types of weighing and measuring devices.

An inspector or sealer shall successfully complete applicable NIST training with respect to each type of weighing or measuring device he seeks to test or inspect under authority of the act. In addition to the general training described in § 8.2 (relating to general adoption of NIST training program), the following training or certification, or both, is required of persons who inspect or test particular types of weighing or measuring devices:

(1) **UPC scanning systems and PLU devices.** A State inspector, county sealer or city sealer must be a certified UPC/PLU inspector, as described in Chapter 5, (relating to UPC scanning systems and PLU devices), as a prerequisite to inspecting UPC scanning systems or PLU devices for purposes of the Act.

(2) **Types of weights and measures [listed] REFERENCED at § 4.4.** A State inspector, county sealer or city sealer must successfully complete the applicable training course [listed at § 4.6(b) (relating to training courses), or any updated list published in accordance with § 4.6(c),] INDICATED ON THE CURRENT LIST OF NIST TRAINING COURSES REFERENCED AT § 4.6 (RELATING TO TRAINING COURSES) as a prerequisite to inspecting or testing any of the categories and types of weighing and measuring devices in § 4.4 (relating to categories and types of weighing and measuring devices) for purposes of the act.

(3) **Other weights and measures with respect to which NIST training courses exist.** If there exists a NIST training course applicable to a specific category or type of weighing and measuring device not described in paragraph (1) or (2), a State inspector, county sealer or city sealer shall successfully complete that training course as a prerequisite to inspecting or testing that category or type of device for purposes of the act.

§ 8.4. Prior training.

A State inspector, county sealer or city sealer who has successfully completed a NIST training course prior to _____ (*Editor's Note: The blank refers to the effective date of adoption of this chapter.*), and who has continued to work as a State inspector, county sealer or city sealer since completing the course, AND WHO PROVIDES THE DEPARTMENT A COPY OF THE APPLICABLE COURSE

COMPLETION CERTIFICATE OR OTHER DOCUMENTATION EVIDENCING COMPLETION OF THE COURSE, shall be deemed to have met the minimum training requirements of this chapter with respect to any category or type of weighing and measuring device addressed in that NIST training course. THE DEPARTMENT WILL MAIL THE INSPECTOR OR SEALER WRITTEN CONFIRMATION THAT THE SEALER OR INSPECTOR IS DEEMED TO HAVE MET THESE REQUIREMENTS WITHIN 10 DAYS OF RECEIVING THE REFERENCED CERTIFICATE OR DOCUMENTATION.

§ 8.5. Supplemental or refresher training.

The Department may develop supplemental training courses or refresher courses for State inspectors, county sealers or city sealers. The Department may require the successful completion of such a course by a State inspector, county sealer or city sealer by providing the inspector or sealer written notice of this requirement. The Department will afford an inspector or sealer at least 6 months within which to complete the training course or refresher course, and will schedule [adequate] A SUFFICIENT NUMBER OF course sessions to allow all inspectors and sealers to attend.

CHAPTER 9. WEIGHMASTERS

GENERAL

Sec.

- 9.1. Purpose.
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- 9.3. License required.
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- 9.6. Term of license; subsequent licenses.
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- 9.10. Weighmaster's certificate.
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- [9.11.] 9.12. Retention and inspection of certificates.

SOLID FUEL

- 9.21. Weighmaster's certificate required.
- 9.22. Sales by employer-producer to employees.
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- 9.25. Responsibilities of weighmasters [and shippers].
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scales and tippie scales.

9.28. Reweighing and issuance of certificates.

9.29. Reciprocity with New York.

§ 9.1. Purpose.

This chapter is intended to establish terms, conditions and procedures applicable to the licensure and performance of licensed public weighmasters in accordance with Subchapter C of the Act (relating to public weighmasters).

§ 9.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Gross weight - Total weight of vehicle and load.

Net weight - Gross weight less tare weight.

Public weighing - The weighing of any commodity for any commercial purpose.

Tare weight - The actual weight of only the vehicle.

Weighmaster's certificate - A document in the format set forth in § 9.11 (relating to weighmaster's certificate), evidencing that the issuer is licensed by the Department in accordance with section 4151 of the act (relating to licenses), has weighed the material described in that document on an approved scale which has been tested for accuracy, and has complied with relevant provisions of this [subchapter] chapter.

§ 9.3. License required.

A person may not assume the title "licensed public weighmaster" or any title of similar import, perform the duties or acts to be performed by a licensed public weighmaster under the act or this chapter, hold himself out as a licensed public weighmaster, issue any weighmaster's certificate, ticket memorandum or statement or engage in the full-time or part-time business of public weighing unless the person holds a valid license as a licensed public weighmaster.

§ 9.4. Qualifications.

A person shall meet the following requirements in order to be qualified to apply for a public weighmaster's license:

(1) The prospective applicant shall be at least 18 years of age as of the date of application.

(2) The prospective applicant shall own or have use of a type of weighing device approved by the Bureau in accordance with subchapter D of the act (relating to device type approval) and with Chapter 10 (relating to device type approval) and approved by a weights and measures officer of the Commonwealth for use as of the date of application.

§ 9.5. Application for public weighmaster's license.

(a) **Obtaining an application form.** The Department will provide a person an application form for a public weighmaster's license upon request. Requests should be directed to the Department at the address in § 2.2 (relating to contacting the Department).

(b) Requirements of the form. The application form for a public weighmaster's license shall require the following information of the applicant:

(1) The name and address of the business for which the licensed public weighmaster would be conducting weighing.

(2) The name, address and age of the applicant.

(3) The location of the scales where weighing would be conducted by the licensed public weighmaster.

(4) Verification that the scale or scales referenced at paragraph (3) [belong to a type of weighing device approved by the Bureau in accordance with Chapter 10 (relating to device type approval) and approved by a weights and measures officer of the Commonwealth for use as of the date of application] HAVE BEEN INSPECTED AND APPROVED BY A STATE INSPECTOR, COUNTY SEALER OR CITY SEALER IN ACCORDANCE WITH THE REQUIREMENTS OF THE ACT AND THIS PART.

(c) License fee. The fee for a public weighmaster's license is \$60. This fee shall be by check or money order made payable to the "Commonwealth of Pa."

(d) Submitting the application and fee. An applicant for a public weighmaster's license shall submit [the] A COMPLETED application form and the license fee to the Department at the address in § 2.2 (relating to contacting the Department).

(e) Departmental action on application. The Department will, within 30 days of receiving [an] A COMPLETED application form and the correct license fee, do one of the following:

(1) Mail the applicant a public weighmaster's license.

(2) If the application form is incomplete, illegible or otherwise deficient, the Department will mail the applicant written notice of the problem and the action required to resolve it. If the Department notifies an applicant of a deficiency, its review and consideration of the application will cease until the deficiency is corrected, at which time the 30-day review period will begin again.

(3) Refer the application to any county or city inspector of weights and measures for a report TO BE DELIVERED TO THE DEPARTMENT WITHIN 30 DAYS OF RECEIPT OF THE REFERRAL as to the accuracy of the statements made on the application, the suitability of the scales to be used by the applicant and other information the Department might reasonably require, [and] mail the applicant written notice of this referral and advise the applicant that the Department will complete its review of the application within 30 days of receiving the report from the entity to whom the application was referred.

§ 9.6. Term of license; subsequent licenses.

(a) Term. A public weighmaster's license is valid for 2 years from the date it is issued.

(b) Subsequent licenses. A licensed public weighmaster shall follow the application process described at § 9.5. (relating to application for public weighmaster's license) to acquire a new license. To avoid a lapse in licensure, a licensed public weighmaster is encouraged to apply for a new license at least 60 days in advance of the expiration of [his] THE current license.

(c) **Change of status.** If there is a change to any name or address provided the Department on the public weighmaster's license application, [a] THE licensed public weighmaster shall notify the Department of this change within 48 hours of its occurrence. Although this notification may be made by a telephone to meet this 48 hour deadline, the licensed public weighmaster shall subsequently mail or deliver written notice of this change to the Department within 7 days of its occurrence.

§ 9.7. Format of a public weighmaster's license.

A public weighmaster's license issued by the Department under this subchapter will contain the following:

- (1) The name of the person to whom it is issued.
- (2) A unique license number assigned to the public weighmaster.
- (3) The name and address of the business for which the licensed public weighmaster conducts public weighing.
- (4) The location of the scales where the licensed public weighmaster conducts public weighing.
- (5) The date the license was issued.
- (6) The date the license will expire.
- (7) Other information the Department deems reasonable FOR A PUBLIC WEIGHMASTER'S LICENSE.

§ 9.8. Display of license required.

A licensed public weighmaster shall conspicuously display [his] THE license, or a photocopy of the license, at the place where the licensed public weighmaster is engaged in weighing.

§ 9.9. Commodities sold by weight.

Any commodity to be sold by weight in this Commonwealth shall be weighed by a licensed public weighmaster at the time of sale or delivery on scales which meet the following requirements:

- (1) The scales are suitable for weighing the tare and gross weight of the vehicle or vehicle and trailer transporting the commodity.
- (2) The scales are located within this Commonwealth.
- (3) The scales are of a type approved by the Department in accordance with Subchapter D of the act (relating to device type approval) and Chapter 10 (relating to device type approval).
- (4) The scales measure weights of greater than 1,000 pounds.

§ 9.10. Weighmaster's certificate.

(a) **Certificates required.** A licensed public weighmaster shall, at [his] THE LICENSED PUBLIC WEIGHMASTER'S own expense, supply himself with [weighmaster] WEIGHMASTER'S certificates formatted in accordance with subsection (b). The Bureau will provide a sample weighmaster's certificate upon request.

(b) **Contents.** A weighmaster's certificate shall contain the following information:

- (1) The kind and size of the commodity.

- (2) The name and address of the seller.
- (3) The name and address of the purchaser.
- (4) The license number of the vehicle and trailer, or other means of ITS permanent identification.
- (5) The signature and license number of the licensed public weighmaster who weighed the commodity and who issued the weighmaster's certificate.
- (6) The date and hour when weighed.
- (7) The gross weight in avoirdupois pounds of the vehicle and the load, the tare weight and net weight of the commodity, and, where the load is divided into lots, the net weight of each lot.
- (8) A sequential serial number.
- (9) Other relevant information the licensed public weighmaster deems necessary.

(c) Triplicate form. A weighmaster's certificate shall be prepared in triplicate.

(d) Distinguishing original from copies. The original weighmaster's certificate shall bear the words "Customer's Copy", and the two copies shall bear the words "Void - Customer Do Not Accept".

(e) Variations in format and size. The form and size of a weighmaster's certificate may be such as to suit any system or accounting device, as long as the certificate otherwise meets the requirements of this [subchapter] CHAPTER.

§ 9.11. Issuing a public weighmaster's certificate.

(a) General requirement. A licensed public weighmaster shall issue a weighmaster's certificate with respect to any public weighing [he] THE LICENSED PUBLIC WEIGHMASTER conducts.

(b) Required weighing device. A licensed public weighmaster shall, when making a public weighing, use a weighing device which is of a type approved by the Department in accordance with Subchapter D of the act (relating to device type approval) and Chapter 10 (relating to device type approval), suitable for the weighing of the amount and kind of commodity to be weighed and which has been tested and approved for use by a weights and measures officer of this Commonwealth preceding the date of the weighing.

(c) Order of issuance. A licensed public weighmaster shall issue weighmaster's certificates in consecutive order of the serial numbers affixed thereon.

(d) Computer generated, typewritten or indelible pencil. The original weighmaster's certificate shall be computer generated, typewritten or [made out in] COMPLETED WITH indelible pencil.

(e) One licensed public weighmaster per certificate. A public weighmaster's certificate shall be entirely the product of a single licensed public weighmaster. A licensed public weighmaster may not enter any weight value on a weighmaster's certificate unless the public weighmaster has personally determined that weight, and may not make any entry on a weighmaster's certificate of another licensed public weighmaster.

(f) Clarity required. A licensed public weighmaster shall issue a complete and accurate weighmaster's certificate that [clearly] LEGIBLY shows what weights were actually determined. If the certificate form provides for the entry of gross, tare and net

weights, and the licensed public weighmaster determines fewer than these three weights, he shall strike through or otherwise cancel these undetermined weights on the certificate. If weights recorded on a certificate were determined on different dates, the certificate shall clearly report these dates. If the weights recorded on the certificate were determined using different scales, the certificate shall clearly identify these scales.

(g) Reweighing solid fuel. A licensed public weighmaster shall not reweigh or issue a weighmaster's certificate for solid fuel unless the motor vehicle operator has surrendered the original and all duplicate weighmaster's certificates in his possession pertaining to the solid fuel. The licensed public weighmaster shall attach these certificates to the scale copy of the new weighmaster's certificate. The new certificate shall be retained in a manner that they may be easily reconciled. These provisions notwithstanding, a duplicate copy of the original weighmaster's certificate may be returned to the operator of the vehicle if it is obliterated with a rubber stamp using the following legend:

This solid fuel has been reweighed and this certificate should not be accepted. Any attempt to use this certificate to deliver solid fuel should be reported to your local or State inspector of weights and measures at once.

(h) Distribution of original and copies.

(1) The original of a weighmaster's certificate shall be delivered to the purchaser of the commodity specified in the certificate at the time of delivery.

(2) One copy of a weighmaster's certificate shall be maintained at the place of weighing for a period of at least 2 years. A copy of a weighmaster's certificate may be retained by the business selling or delivering the commodity.

§ 9.12. Retention and inspection of certificates.

A licensed public weighmaster is responsible to retain a copy of each weighmaster's certificate [he] THE PUBLIC WEIGHMASTER issues for at least 2 years. These records shall be subject to inspection or subpoena for use as evidence by any State, county or city inspector of weights and measures.

SOLID FUEL

§ 9.21. Weighmaster's certificate required.

(a) Rule for lots exceeding 100 pounds. A person may not sell, transport over a public highway, deliver or cause to be delivered or start out to deliver any solid fuel in a lot or lots in amounts exceeding 100 pounds unless each lot [in each] IS IN A separate compartment of the vehicle or vehicle and trailer AND EACH LOT is accompanied by a weighmaster's certificate.

(b) Exceptions. The rule in paragraph (a) shall not apply to solid fuel when any of the following occur:

(1) The weighing takes place at the point of delivery or sale.

(2) The producer of the solid fuel furnishes proof, satisfactory to the Department or to an inspector of weights and measures, that the solid fuel being transported comes from the producer's own mine, is the producer's own property and is being transported for purposes other than sale.

(3) The sale transaction entails the sale of a boatload or railroad carload of solid fuel delivered directly from the boat or car to a purchaser and accepted as to weight by the purchaser on the bill of lading or other voucher issued by the carrier.

(c) Rule for lots of 100 pounds or less. A person may not sell, transport over a public highway, deliver or cause to be delivered or start out to deliver any solid fuel in a lot or lots in amounts of 100 pounds or less unless each lot [in each] IS IN A separate compartment of the vehicle or vehicle and trailer AND EACH LOT is accompanied by a weighmaster's certificate [unless]. THESE REQUIREMENTS NEED NOT BE MET IF the solid fuel is in closed containers or closed bags and the following information is plainly printed on the container or bag or on a tag securely attached to the container or bag:

- (1) The net contents of the container or bag (expressed in avoirdupois pounds).
- (2) The type of solid fuel.
- (3) The name, address, city, state and zip code of the seller.

§ 9.22. Sales by employer-producer to employees.

(a) Sales generally. If it is specified under the provisions of a contract, an employer-producer of solid fuel may sell solid fuel at cost, by cubic contents instead of weight, to its employees for their own use and consumption. No solid fuel sold in this way shall be transported over a public highway unless the operator of the vehicle possesses a certificate of origin.

(b) Obtaining a certificate of origin. The Department will provide a sample copy of a certificate of origin upon request. A sample certificate may be photocopied for use by a producer-employer.

(c) Content of certificate of origin. A certificate of origin shall require the following:

- (1) The name and address of the producer-employer.
- (2) A description of the type and approximate cubic volume of the solid fuel being transported.
- (3) The destination of the solid fuel.
- (4) A statement that the certificate of origin is issued in accordance with section 4168 of the act (relating to sales by employer-producer to employees).
- (5) The signature of the [producer-employer] EMPLOYER-PRODUCER or its agent.

(d) Record retention. A copy of any certificate of origin issued under section 4168 of the act shall be retained at the place of production for at least 2 years, and shall, during business hours, be subject to inspection or subpoena for use as evidence by any State, county or city inspector of weights and measures.

§ 9.23. Certificate affecting weighing requirements.

(a) Authorization to haul without weighmaster's certificate. [If, for any good and sufficient reason, it is impossible to weigh solid fuel at the point of origin and if the solid fuel is loaded into vehicles by the producer but the sale is not consummated nor delivery actually started, and if the producer or merchant can prove to the satisfaction of

the Department that a new scale cannot be purchased or repairs secured for a scale already installed, the Department will issue an authorization to haul the solid fuel on the public highway to the nearest available scale of a licensed weighmaster of the Commonwealth for a distance not to exceed 10 miles, at which point the gross, tare and net weight of the solid fuel shall be determined in order that the producer of the solid fuel is able to consummate its sale and the trucker will be furnished with a proper weighmaster's certificate prior to the departure of the solid fuel for delivery to the consumer.] THE DEPARTMENT WILL ISSUE AN AUTHORIZATION ALLOWING A PERSON TO HAUL SOLID FUEL ON THE PUBLIC HIGHWAYS FOR A DISTANCE OF UP TO 10 MILES FROM THE POINT OF ORIGIN OF THE SOLID FUEL WITHOUT A WEIGHMASTER'S CERTIFICATE IF ALL OF THE FOLLOWING OCCUR:

(1) THERE ARE NO SCALES AT THE POINT OF ORIGIN OF THE SOLID FUEL, OR THE SCALES ARE INADEQUATE, INACCURATE OR OTHERWISE INCAPABLE OF PROVIDING THE ACCURATE READINGS NECESSARY FOR THE PRODUCTION OF A WEIGHMASTER'S CERTIFICATE.

(2) THE SOLID FUEL HAS BEEN LOADED INTO A VEHICLE BY THE PRODUCER OF THE SOLID FUEL.

(3) THE SALE OF THE SOLID FUEL HAS NOT BEEN CONSUMATED AND THE DELIVERY OF THE SOLID FUEL TO THE CONSUMER HAS NOT YET BEGUN.

(4) THERE ARE ADEQUATE SCALES TO WEIGH THE SOLID FUEL WITHIN 10 MILES OF THE POINT OF ORIGIN OF THE SOLID FUEL.

IF THE DEPARTMENT ISSUES THE AUTHORIZATION DESCRIBED IN THIS SUBSECTION, THE PERSON TO WHOM IT IS ISSUED SHALL HAUL THE SOLID FUEL TO THE NEAREST AVAILABLE SCALE OF A LICENSED PUBLIC WEIGHMASTER, BUT NO MORE THAN 10 MILES FROM THE POINT OF ORIGIN OF THE SOLID FUEL. AT THIS SCALE THE WEIGHT OF THE SOLID FUEL SHALL BE DETERMINED SO THAT THE PRODUCER OF THE SOLID FUEL IS ABLE TO CONSUMATE ITS SALE. THE TRUCKER WILL BE FURNISHED WITH A WEIGHMASTER'S CERTIFICATE FOR THE SOLID FUEL BEFORE DEPARTURE OF THE SOLID FUEL FROM THE SCALE FOR DELIVERY TO THE CONSUMER.

(b) Certificate of transport. A conveyor of solid fuel operating under this section shall have in his possession at all times during the period of transport from point of origin to place of weighing and departure for delivery a certificate of transport containing the following information:

- (1) The date on which the certificate is issued.
- (2) The time of leaving THE mine or breaker.
- (3) The name of the driver of THE TRANSPORTING vehicle.
- (4) The license number of the TRANSPORTING vehicle and trailer.
- (5) The name of the owner or lessor of the mine or breaker.
- (6) The location of the mine or breaker.
- (7) The location of the scale to which solid fuel is being conveyed.

(c) Source and disposition of certificate of transport. The certificate of transport shall be furnished by the owner or lessor of the mine or breaker and surrendered to the weighmaster upon issuance of the [certificate of a weighmaster] WEIGHMASTER'S CERTIFICATE.

(d) Registration. An owner or lessor of mines or breakers operating under this section shall register [with the county inspector of weights and measures in the county in which they are located] WITH THE DEPARTMENT BY LETTER TO THE ADDRESS IN § 2.2 (RELATING TO CONTACTING THE DEPARTMENT), AND PROVIDE A COPY OF THIS REGISTRATION LETTER TO ANY COUNTY SEALER OR CITY SEALER HAVING ENFORCEMENT AUTHORITY WITH RESPECT TO THE AREA FROM WHICH THE SOLID FUEL ORIGINATES OR THE SCALES TO WHICH IT IS TO BE TRANSPORTED. THE REGISTRATION SHALL INCLUDE the name and location of the mines or breakers and the names and locations of the scales to which [they propose] THE OWNER OR LESSOR PROPOSES to transport solid fuel for the purpose of weighing before starting it out for delivery. [A copy of this registration shall be filed with the Department, at the address in § 2.2 (relating to contacting the Department).]

§ 9.24. Limitations of certificate for anthracite.

(a) Certificate of quality required. [In the case of anthracite, except barley and the smaller sizes, being transported under § 9.23 (relating to solid fuel: certificate affecting weighing requirements), a weighmaster may not weigh the anthracite unless the certificate of transport is accompanied by the following certificate of quality,] IF SOLID FUEL IS TRANSPORTED TO A LICENSED PUBLIC WEIGHMASTER UNDER AUTHORITY OF A CERTIFICATE OF TRANSPORT AS DESCRIBED IN § 9.23 (RELATING TO CERTIFICATE AFFECTING WEIGHING REQUIREMENTS), AND THE SOLID FUEL IS ANTHRACITE (EXCLUDING BARLEY AND SMALLER SIZES), THE WEIGHMASTER MAY NOT WEIGH THE ANTHRACITE UNLESS THE CERTIFICATE OF TRANSPORT IS ACCOMPANIED BY A CERTIFICATE OF QUALITY. A CERTIFICATE OF QUALITY SHALL BE made out in ink or indelible pencil, in triplicate, with the original bearing the legend "original" and the copies bearing the legend "copy" in 1 inch letters diagonally across the face[, and]. A CERTIFICATE OF QUALITY SHALL BE sufficiently mutilated at the left end to permit it to be securely attached to the corresponding copies of the certificate of the weighmaster as provided in subsection (b)[:]. THE FORMAT OF THE CERTIFICATE OF QUALITY SHALL BE AS FOLLOWS:

CERTIFICATE OF QUALITY
PENNSYLVANIA ANTHRACITE STANDARDS LAW

Name of Producer

ADDRESS OF PREPARATION PLANT OR BREAKER

Weighmaster's Certificate Serial No. _____

Quality Certificate Serial No. _____

Date _____

Name and Address of Purchaser or Consignee: _____

Size of Anthracite _____

Model and Registration Number of Transporting Vehicle _____

ATTESTED: "STANDARD ANTHRACITE" or "SUBSTANDARD ANTHRACITE"

(State which kind)

(Name of Shipper)

By: _____

(Signature or facsimile signature)

(AUTHORIZED Officer, partner or owner)

(b) Requirements. The weighmaster may not deliver the [certificate of the weighmaster] WEIGHMASTER'S CERTIFICATE to the transporter until the weighmaster has first inserted the serial number of the [certificate of the weighmaster] WEIGHMASTER'S CERTIFICATE on copies of the certificate of quality and securely attached the certificate of quality to the appropriately corresponding copies of the [certificate of the weighmaster] WEIGHMASTER'S CERTIFICATE, including the scale copy.

§ 9.25. Responsibilities of weighmasters [and shippers].

[(a) Weighmasters.] Weighmasters will be held responsible and their licenses will be subject to revocation for negligence, failure to abide by the requirements of this chapter, or failure to reconcile their records.

[(b) Shippers.] Both the shipper and the weighmaster shall be held to strict accountability. If the provisions of §§ 9.21 - 9.24 and this section are not strictly observed, the license of the weighmaster, as well as authorization to transport from the preparation plant or breaker to weigh scales on a certificate of transport, will be revoked.]

§ 9.26. Certificate of special transportation.

(a) Requirement. If coal is not offered for sale and it is necessary to transport the coal over the public highway from the point of mining, stripping operation or culm bank to railroad cars, coke ovens, breakers, washery or other form of preparation plants, the operator of the vehicle transporting the coal shall [have in his possession] POSSESS a certificate of special transportation, containing the following information, written in ink or indelible pencil:

- (1) The date and time on which the certificate was issued.

(2) The license number of the truck (IF A TRUCK IS THE TRANSPORT VEHICLE).

(3) The name of the owner or lessor OF THE mine, stripping operation or culm bank.

(4) The destination of the TRANSPORT vehicle.

(5) The purpose for which the coal is being transported: that is, coking, preparation for sale or PREPARATION FOR TRANSPORT IN railroad cars.

(b) Issuance and surrender. [A certificate of special transportation shall be issued for each day to the driver of each truck by a responsible employee of the operator in charge of the mine, stripping or culm bank or of the preparation plant, at or before starting out for delivery for that day, and shall be surrendered at the point of delivery when the last load for the day is delivered, to a responsible employee at the operation, where the certificate shall be kept for of 90 days.] THE DRIVER OF EACH TRUCK SHALL POSSESS A NEW CERTIFICATE OF SPECIAL TRANSPORTATION EACH DAY THE DRIVER HAULS THE COAL DESCRIBED IN SUBSECTION (A). THE CERTIFICATE OF SPECIAL TRANSPORTATION SHALL BE ISSUED TO THE DRIVER AT OR BEFORE THE DRIVER STARTS OUT FOR THAT DAY'S DELIVERIES. THE CERTIFICATE SHALL BE ISSUED BY A RESPONSIBLE EMPLOYEE OF THE OPERATOR OF THE MINE, STRIPPING OPERATION, CULM BANK FROM WHICH THE COAL IS TO BE TRANSPORTED, OR BY A RESPONSIBLE EMPLOYEE OF THE PREPARATION PLANT TO WHICH THE COAL IS TO BE DELIVERED. THE DRIVER SHALL SURRENDER THE CERTIFICATE OF SPECIAL TRANSPORTATION TO A RESPONSIBLE PERSON AT THE POINT OF DELIVERY OF THE LAST LOAD OF THE DAY. THE RECIPIENT OF THE CERTIFICATE OF SPECIAL TRANSPORTATION SHALL RETAIN THE CERTIFICATE FOR AT LEAST 90 DAYS.

(c) Other requirements. [The certificates] CERTIFICATES of special transportation shall be consecutively numbered, made in duplicate, and shall be furnished by and at the expense of the operator. The duplicate shall be retained at the point of issuance for a period of 90 days.

§ 9.27. Issuance of weighmaster certificates with respect to mine track scales and tipple scales.

Weighmaster certificates, as prescribed by the act, may be issued by licensed weighmasters of mine track scales or tipple scales if there is compliance with the following provisions:

(1) The operator of the vehicle shall present to the weighmaster a [certificate of the weighmaster] WEIGHMASTER'S CERTIFICATE showing the tare weight[, as weighed on a scale capable of weighing the vehicle,] prior to loading.

(2) The net weight OF THE SOLID FUEL being loaded in the vehicle shall be determined at the time of loading by [weighing] DETERMINING THE GROSS WEIGHT OF THE LOADED mine cars or buggies and deducting the tare weight of the mine cars or buggies.

(3) The gross weight shall be determined by adding the tare WEIGHT and the net weight.

§ 9.28. Reweighing and issuance of certificates.

(a) Conditions of reweighing. A licensed weighmaster [may] SHALL not reweigh or issue a [certificate of a weighmaster] WEIGHMASTER'S CERTIFICATE for solid fuel unless the motor vehicle operator has surrendered the original and duplicate [certificates of a weighmaster] WEIGHMASTER'S CERTIFICATES in his possession pertaining to the solid fuel. These certificates shall be attached by the weighmaster to the scale copy of the new WEIGHMASTER'S certificate [which]. THE NEW WEIGHMASTER'S CERTIFICATE shall be issued and maintained in a manner that [they] THE NEW CERTIFICATE AND ANY PRIOR CERTIFICATES may be easily reconciled. A duplicate copy may be returned to the operator of vehicle if [it] THE DUPLICATE COPY OF THE WEIGHMASTER'S CERTIFICATE is obliterated with a rubber stamp using the following legend:

This solid fuel has been reweighed and this certificate should not be accepted. Any attempt to use this certificate to deliver solid fuel should be reported to your local or State inspector of weights and measures at once.

(b) Certain anthracite. In the case of anthracite, except barley and the smaller sizes, before issuing the new certificates, the weighmaster shall accurately and legibly imprint on the original and each copy the complete certificate of quality required by the Anthracite Standards Law (73 P.S. §§ 261-269), as it appears on the surrendered certificates.

(c) Consequence of failure to surrender weighmaster certificate. If the operator refuses or fails to surrender the weighmaster certificate, the weighmaster shall refuse to weigh the vehicle.

§ 9.29. Reciprocity with New York.

[Due to reciprocal policies of New York, the several county, city and State inspectors of weights and measures are authorized to recognize and accept weight certificates issued within a zone of 5 miles from the New York State border line, provided solid fuel is weighed and the certificates are issued by a weighmaster licensed by New York, whose scales are located not more than 5 miles distant from the border line of this Commonwealth.] STATE INSPECTORS, COUNTY SEALERS AND CITY SEALERS SHALL ACCEPT WEIGHT CERTIFICATES ISSUED BY A WEIGHMASTER LICENSED BY THE STATE OF NEW YORK IF BOTH OF THE FOLLOWING OCCUR:

- (1) THE COMMODITY WEIGHED IS SOLID FUEL.
- (2) THE SCALES UPON WHICH THE PUBLIC WEIGHING WAS PERFORMED ARE LOCATED IN NEW YORK, WITHIN 5 MILES OF THE PENNSYLVANIA/NEW YORK BORDER.

CHAPTER 10. DEVICE TYPE APPROVAL

Sec.

- 10.1. Purpose.
- 10.2. Prohibition with respect to unapproved devices.
- 10.3. General standard for approval by Department.

- 10.4. Basic procedure.
- 10.5. Meeting the general standard for approval.
- 10.6. Application and review.
- 10.7. Certificate of approval.
- 10.8. Marking of approved devices.
- 10.9. Specifications, variations and tolerances with respect to device type approval.
- 10.10. Fees.

§ 10.1. Purpose.

This chapter is intended to establish the procedures by which the Department will review and approve or disapprove each type of weighing and measuring device intended for commercial use or in commercial use within this Commonwealth, in accordance with Subchapter D of the act (relating to device type approval) and this chapter.

§ 10.2. Prohibition with respect to unapproved devices.

A person may not manufacture, offer or expose for sale or sell or give away for use in trade or commerce any weighing and measuring device of a type not approved in accordance with Subchapter D of the act (relating to device type approval) and this chapter.

§ 10.3. General standard for approval by the Department.

The Department will approve a type of weighing and measuring device if the type is so designed and constructed that it conforms to or gives correct results in terms of values derived therefrom, is reasonably permanent in its indication and adjustment and does not facilitate the perpetration of fraud.

§ 10.4. Basic procedure.

A person seeking approval of a type of weighing and measuring device shall follow the application procedure in § 10.6 (relating to application and review).

§ 10.5. Meeting the general standard for approval.

(a) Certificate of conformance from NCWM. The Department will approve a type of weighing and measuring device if a certificate of conformance has been issued by the National Type Evaluation Program administered by NCWM with respect to that particular type of weighing and measuring device.

(b) Certificate of conformance from NIST. The Department will approve a type of weighing and measuring device if a certificate of conformance has been issued by NIST with respect to that particular type of weighing and measuring device.

(c) UPC scanning systems and PLU devices. The Department will approve a type of UPC scanning system or PLU device if the person seeking approval can document to the Department's satisfaction that the type of weighing and measuring device meets the standard in § 10.3 (relating to general standard for approval by the Department).

§ 10.6. Application and review.

(a) Obtaining an application. A person seeking the Department's approval of a PARTICULAR type of weighing and measuring device shall [obtain] REQUEST an APPROVED application form from the Department. [The Department will provide the form upon request.] The prospective applicant may contact the Department at the address in § 2.2 (relating to contacting the Department).

(b) Contents of application form. The application form shall require the following information:

(1) The name and address of the applicant.

(2) A detailed description of the type of weighing and measuring device with respect to which approval is sought.

(3) A copy of any certificate of conformance issued by the National Type Evaluation Program administered by NCWM with respect to that type.

(4) A copy of any certificate of conformance issued by NIST with respect to that type.

(5) Other documentation necessary to a reasoned determination by the Department as to whether the type meets the general standard set forth at §§ 10.3 (relating to general standard for approval by the Department) and 10.5 (relating to meeting the general standard for approval). If a certificate of conformance as described in paragraph [(2) or (3)] (3) OR (4) is not submitted, a sample of the type - or specifications with respect to the type - shall be submitted as part of the application.

(6) Either a precise description of the manner in which devices of the type with respect to which approval is sought are clearly marked for purposes of identification with the name, initials or trademark of the manufacturer and with the manufacturer's designation which positively identifies the pattern or design of the device, or an explanation of the reason it is impracticable to mark the devices as required by this section and a request for a waiver of some or all of these marking requirements under section 4174 of the act (relating to marking of approved weights and measures).

(7) Other information the Department might reasonably require IN CONSIDERING APPROVAL.

(c) Submitting the application. The applicant shall forward the completed application from to the address in § 2.2.

(d) Review by Department. The Department will complete its review of an application within 30 days of receiving a complete application form. If the Department requests additional information from an applicant, this 30-day period does not commence until the requested information is received. The Department will approve a type of weighing and measuring device if it meets the standards for approval described in §§ 10.3 and 10.5. The Department will mail the applicant either a certificate of approval or a notice of disapproval within that 30-day period. A notice of disapproval will contain an explanation of the basis upon which the decision to disapprove was made, and otherwise meet the requirements of section 4172 of the act (relating to certificates of approval; notice of disapproval; appeals).

(e) Review of decision to disapprove a device type. An applicant shall follow the procedure in section 4172 of the act to obtain review of a decision by the Department to disapprove a device type.

§ 10.7. Certificate of approval.

(a) Content of certificate. A certificate of approval issued by the Department under this chapter will contain the following:

- (1) The name and address of the person to whom it is issued.
- (2) A description of the type of APPROVED weighing and measuring device [with respect to which approval is granted].
- (3) A reference to the requirement that APPROVED WEIGHING AND MEASURING devices [of the approved type] be clearly marked for purposes of identification with the name, initials or trademark of the manufacturer and with the manufacturer's designation which positively identifies the pattern or design of the device [unless]. THIS PROVISION WILL NOT APPLY WHERE a waiver is obtained from the Department in accordance with section 4174 of the act (relating to marking of approved weights and measures).
- (4) The date of issuance of the certificate.
- (5) Other information deemed relevant by the Department FOR INCLUSION IN THE CERTIFICATE.

(b) Effect of issuance of certificate. The issuance of a certificate of approval by the Department with respect to a type of weighing and measuring device confirms that the type meets the standards for device type approval in Subchapter D of the act (relating to device type approval) and this chapter, and is not a guarantee or verification of the correctness of any individual weight or measure belonging to that type.

§ 10.8. Marking of approved devices.

(a) General. A weighing and measuring device that is of a type approved under Subchapter D of the act (relating to device type approval) and this chapter shall be conspicuously, clearly and permanently marked in accordance with the representations made on the approval application, unless the Department grants an exception in accordance with section 4174 of the act (relating to marking of approved weights and measures).

(b) UPC scanning systems and PLU devices. The Department is satisfied it is generally impracticable to mark a UPC scanning system or PLU device as required under section 4174 of the act. The Department will issue a certificate to that effect to any manufacturer applying for the same. A certificate issued under this subsection exempts the system or device described therein from having to be marked as otherwise required under section 4174 of the act.

§ 10.9. Specifications, variations and tolerances with respect to device type approval.

(a) General. The specifications, variations and tolerances recommended by NIST and published in the NIST Handbook 44, and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, variations and tolerances of the Department with respect to the approval of types of weighing and measuring devices under this chapter.

(b) Meeting the standards.

(1) If either NIST or NCWM has issued a certificate of conformance with respect to a type of weighing and measuring device, that type shall be deemed to be in compliance with the specifications, variations and tolerances of the Department for device type approval.

(2) In determining whether to issue a certificate of approval with respect to a type of UPC scanning system or PLU device, the Department will apply the general standard for approval set forth at §§ 10.3 (relating to general standard for approval by the department) and 10.5 (relating to meeting the general standard for approval).

§ 10.10. Fees.

(a) **Fees.** The State Metrology Laboratory may charge an applicant a fee for conducting such tests [as might] THAT MAY be required for device type approval under this chapter.

(b) **Exemption.** A city or county which is required to procure standards of weights and measures and any additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the provisions of the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.

PART II. PACKAGING AND LABELING

CHAPTER 21. GENERAL PROVISIONS

PRELIMINARY PROVISIONS

§ 21.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act - [The Weights and Measures Act of 1965 (73 P.S. §§ 1651-1692) (Transferred from 76 P.S. §§ 100-1 - 100-42 in 1978).] The Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4101-4194.

Commodity in package form or package - A commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container containing packages that individually conform to the requirements of the Act. An individual item or lot of a commodity not in package form, or which does not meet this definition, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be a commodity in package form.

Consumer package or package of consumer commodity - A commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household in connection with personal possessions and which is usually consumed or expended in the course of the consumption or use.

Nonconsumer package or package of nonconsumer commodity - A commodity in package form other than a consumer package [including], and particularly a package intended solely for industrial or institutional use or for wholesale distribution only.

§ 21.3. Adoption of "Uniform Regulation for the Method of Sale of Commodities".

(a) General. The Department hereby adopts the "Uniform Regulation for the Method of Sale of Commodities", as adopted by the NIST in its Handbook 130, and supplements thereto and revisions thereof, as the method of sale of commodities in this Commonwealth.

(b) Exception. If any provision of the "Uniform Regulation for the Method of Sale of Commodities" contradicts any provision of the act or this title, the provision of the "Uniform Regulation for the Method of Sale of Commodities" may not be applied, and the relevant provision of the act or this title shall be applied.

* * *

CHAPTER 35. (Reserved)

§ 35.1. (Reserved).

§ 35.2. (Reserved).

§ 35.3. (Reserved).

CHAPTER 39. (Reserved)

§§ 39.1-39.20 (Reserved).

Appendix A
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF RIDE & MEASUREMENT STANDARDS
2301 NORTH CAMERON STREET
HARRISBURG, PA 17110-9408

PRICE VERIFICATION REPORT

Page ___ of ___

Inspection: 1st 2nd 3rd Complaint: Frequency: Normal Increased Type: Stratified Automated Randomized

Location of Test (Store Name, Address, County, Zip Code)	Date:	Telephone:
	Manager:	Type of Store:

Identity, Brand Name, Item or Style Number	Number of Items, Size, Location in Store, or U.P.C. Code	Offered Price	Price Charged	Price Error in Cents ±
1.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
2.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
3.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
4.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
5.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
6.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
7.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
8.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			

Comments/Remarks:

Report Acknowledgement

Name/Title _____
 Inspector _____ Time In: _____
 Time Out: _____

Evaluation of Results:

___ Sample- ___ Not on File= ___ Adjusted Sample
 ___ Errors+ ___ Adjusted Sample= ___ Error in %
 Accuracy ___ % Ratio: ___ Overcharges ___ Undercharges

Reinspection will be made within 30 days.

Original white - Bureau copy

Pink - Inspector's copy

Yellow - Company copy

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[70 PA. CODE CHS. 1—10, 21, 35 AND 39]
Weights, Measures and Standards

The Department of Agriculture (Department) proposes to establish regulations required or authorized under 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act) (act).

This proposed regulatory objective will be accomplished by deleting Chapters 1, 3, 35 and 39; by amending Chapter 21 (relating to general provisions); and by adding Chapters 2 and 4—10 to read as set forth in Annex A.

Authority

The Department has the power and authority to adopt this proposed rulemaking. This authority includes:

(1) General authority to regulate as necessary for the performance of its responsibilities under sections 4110 and 4190 of the act (relating to specific powers and duties of department; regulations; and rules and regulations).

(2) Authority to require, through regulation, the registration of sellers, installers, servicers and repairers of commercially-used weighing and measuring devices under section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices).

(3) Authority to require, through regulation, the registration and reporting of testing of commercially-used weighing and measuring devices under section 4114 of the act (relating to registration and report of inspection and testing of weighing and measuring devices used for commercial purposes).

(4) The duty to establish, by regulation, minimum training standards for State inspectors and county and city sealers of weights and measures under section 4115 of the act (relating to training).

(5) Authority to regulate the method of sale of commodities in this Commonwealth under section 4127(c) of the act (relating to method of sale of commodities).

(6) The duty to establish, by regulation, reasonable variations in weight, measure or count with respect to commodities under section 4128(b) of the act (relating to packages; declarations of quantity and origin; variations; exemptions).

(7) General authority to regulate with respect to public weighmasters under sections 4150 and 4167 of the act (relating to enforcement and regulations; and rules and regulations).

(8) Authority to regulate the weighing and measuring device types which must be reviewed and approved by the Department before being used in commerce in this Commonwealth under sections 4170 and 4176 of the act (relating to approval of types of weights and measures and weighing and measuring devices; and rules and regulations).

(9) Authority to regulate with respect to domestic fuel oil under section 4183(b) of the act (relating to enforcement of chapter, rules and regulations).

Need for the Proposed Amendments

There is an immediate need for the proposed amendments. The act assigns the Department primary responsibility for conducting annual inspections of every commercially-used weighing or measuring device in this Commonwealth. It also allows some of this inspection responsibility to be assumed by county sealers or city sealers (if working under a memorandum of understanding with the Department), certified examiners of weights and measures (with respect to specific designated types of weighing or measuring devices) and private certification programs (with respect to Universal Product Code scanning systems and Price Look Up devices). The proposed amendments would establish minimum training and certification requirements for persons conducting inspections under authority of the act.

A number of the provisions of the proposed amendments are specifically required by the act. These provisions are described in this Preamble, under the "Authority" heading.

There is also a consumer protection aspect to the proposed amendments. Implementation of the proposed amendments should ultimately make the weighing or measuring devices in commercial use in this Commonwealth more reliable, and help ensure that a consumer gets the full measure of any product the consumer purchases by weight, measure or count, or which is passed through a Universal Product Code (UPC) scanning system or Price Look Up (PLU) device.

The business community needs the proposed amendments in that they should ultimately help lessen underpricing or underweighing of products and the monetary losses associated with the underpricing or underweighing.

In summary, the Department is satisfied there is a need for the proposed amendments, and that the proposed amendments are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of the Proposed Amendments

The proposed amendments are formatted to address various topics in approximately the same order in which these topics are addressed in the act.

Proposed § 2.1 (relating to definitions) contains definitions from the act, prior regulations and other sources.

Proposed Chapter 4 (relating to certified examiners of weights and measures) would establish a procedure by which a qualified person could apply to be designated a Certified Examiner of Weights and Measures (CEWM) by the Department. A CEWM could then inspect particular types of weighing or measuring devices (listed in section 4112(b) of the act), and the Department would accept the inspection report of a CEWM in lieu of conducting the inspection itself. A CEWM could charge a fee for inspection services. Proposed §§ 4.5 and 4.6 (relating to certification standards and training courses) would require a person successfully complete applicable training prescribed by the National Institute of Standards and Technology (NIST) as a prerequisite to becoming a CEWM.

Proposed Chapter 5 (relating to UPC scanning systems and PLU devices) deals with the general subject of UPC scanning systems and PLU devices. These systems and devices comprise the bar code scanner technology that consumers typically encounter in their shopping. In sum-

mary, the technology allows a store to maintain a computerized database of each item in its inventory—and its corresponding price. When a consumer purchases an item from that inventory, a code number is scanned or manually entered into the system and the resulting sales receipt reflects the item and its corresponding price.

The Department had not, historically, considered UPC scanning systems and PLU devices weighing or measuring devices. The act includes these systems and devices under the definition of "weights and measures," though, and makes it the responsibility of the Department to inspect these types of systems and devices in commercial use in this Commonwealth by June 30, 1999, and thereafter within intervals of no more than 12 months.

As an alternative to an annual inspection by the Department (or a county sealer or city sealer acting in accordance with a memorandum of understanding with the Department), the act allows for a qualified private certification program to conduct an unannounced inspection. A private certification program could charge a fee for its services. Only a qualified person who had been designated a certified UPC/PLU inspector by the Department could conduct an inspection of a UPC scanning system or PLU device. Proposed § 5.5 (relating to authority of certified UPC/PLU inspector) sets forth the various circumstances under which this inspection authority could be exercised.

Proposed Chapter 5 (relating to registration of sellers, installers and repairers of weighing and measuring devices) would supplant the current Chapter 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices), which are authorized under section 4112(d) of the act and which were published at 28 Pa.B. 2416 (May 23, 1998).

Proposed Chapter 6 (relating to registration of sellers, installers and repairers of weighing and measuring devices) would establish a formal procedure under which sellers, installers and repairers of weighing and measuring devices would register with the Department.

Proposed § 6.3 (relating to field standards) would require adequate, accurate standards be used in placing a commercial weighing or measuring device into service.

The general subject matter of proposed Chapter 7 (relating to registration and report of inspection of commercial weighing and measuring devices) is required by section 4114 of the act. In summary, owners of commercially-used weighing or measuring devices would have to register their devices with the Department. A person who inspected a device would be required to file an inspection report form with the Department.

Proposed Chapter 8 (relating to training program for inspectors and sealers) pertains to the minimum training requirements for State inspectors, county sealers and city sealers.

Proposed § 8.2 (relating to general adoption of NIST training program) would require any State inspector, county sealer or city sealer to complete the NIST training for inspectors and sealers of weights and measures. In addition, proposed § 8.3 (relating to training with respect to individual types of weighing and measuring devices) would, as its title suggests, prescribe the minimum training required with respect to inspectors of various types of weighing or measuring devices.

Proposed Chapter 9 (relating to weightmasters) deals with weightmasters, and sets forth a number of provisions

relating to solid fuel. In summary, this chapter combines requirements imposed under sections 4150—4168 of the act with the relevant provisions of the former regulations on this subject. These former regulations appeared in Chapters 1 and 3, and would be supplanted by the proposed amendments.

Proposed Chapter 10 (relating to device type approval) contains provisions to establish a procedure under which the Department would approve various types of weighing or measuring devices for commercial use. Proposed § 10.3 (relating to general standard for approval by the Department) would establish the general requirement that a weighing or measuring device give correct results, be reasonably permanent and be constructed so as not to facilitate the perpetration of fraud. The National Conference of Weights and Measures or NIST, or both, issues a "certificate of conformance" with respect to various types of weighing or measuring devices. Proposed § 10.5 (relating to meeting the general standard for approval) would allow approval of a device type with respect to which a certificate has been issued.

In summary, the proposed amendments would effect a comprehensive revision of current regulations relating to weights and measures, and would implement numerous changes under the act. The proposed amendments would allow the Department to more effectively carry-out the extensive duties assigned it under the act.

Persons Likely to be Affected

The proposed amendments will affect a large number of persons and businesses.

Any business that makes commercial use of a weighing or measuring device in this Commonwealth would be affected by these amendments. The affected businesses include those dealing in the commercial sale of liquid or solid fuel, retail or wholesale stores using UPC scanning systems or PLU devices and businesses that sell any product by weight, measure or count.

The proposed amendments will also affect any person who seeks the Department's certification as either a CEWM or a certified UPC/PLU inspector. Once certified, a person could offer his services for a fee.

The proposed amendments will affect consumers throughout this Commonwealth. The proposed amendments are expected to help bring about greater accuracy in commercial weights and measures, and to ensure consumers get full value for their money when purchasing items by weight, volume, count or measure, or when their purchases are totaled using a UPC scanning system or PLU device. In summary, the proposed amendments should result in greater accuracy and fewer errors with respect to merchandise pricing.

Fiscal Impact

Commonwealth

The proposed amendments would have some fiscal impact upon the Commonwealth. The Department will require additional personnel to assist it in administering the certification, registration, inspection and enforcement provisions of the act. Although the need for these additional employees is driven by the act, rather than the proposed amendments, the Department estimates it will need 2 additional office personnel, at an estimated total cost of \$100,000 per year, to meet this obligation. The Department may also require additional field personnel, but is not certain whether this will be necessary. The need for additional field personnel will depend on the extent to which county sealers, city sealers, CEWMs and

private certification programs perform inspections the Department would otherwise be required to perform under the act.

Political Subdivisions

The proposed amendments will not impose appreciable costs upon political subdivisions. Although a county or city that agrees to perform required inspections under a memorandum of understanding with the Department must ensure that its county sealers or city sealers are adequately trained and certified to inspect the types of weights and measures they intend to inspect, this training is not expected to be costly. The Department will offer training for free or at cost to the extent practicable.

Private Sector

The proposed amendments might result in some cost to those persons who seek to become a CEWM or a certified UPC/PLU inspectors but have not taken the training the proposed amendments would require.

The proposed amendments will cost a business that elects to hire a CEWM to perform an inspection whatever fee that inspector charges. Similarly, a business that has a certified UPC/PLU inspector working as part of a private certification program conduct an inspection of its UPC scanning systems or PLU devices might be assessed a fee for this service. Since the number of businesses that will use these inspection alternatives is unclear, and inspection fee amounts are at the discretion of the inspector, the Department cannot offer a realistic estimate of the total costs involved.

Although the Department intends to offer some initial training for free or at cost, its ultimate intention is to allow industry groups or for-profit training providers to undertake a greater role in providing training.

General Public

The proposed amendments will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed amendments will result in an increase in the amount of paperwork handled by the Department. In addition, a person conducting an inspection of a commercial weighing or measuring device under authority of the act would be required to generate and file an inspection report form with respect to each establishment inspected.

Regulatory Review

The Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on September 29, 1998, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed amendments, it must so notify the Department within 10 days of the close of the Committees' review period.

The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed amendments.

Public Comment Period

The public comment period with respect to the proposed amendments shall be 30 days from the date of publication of these proposed amendments in the *Pennsylvania Bulletin*.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Ride and Measurement Standards, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Charles Bruckner, Director, (717) 787-9089.

Annotated Copy

The Department will provide an unofficial annotated copy of Annex A upon request. This annotated copy contains numerous footnotes and may provide useful background information to potential commentators.

Sunset/Expiration Date

Although the proposed amendments will have no sunset date, their efficacy would be reviewed on an ongoing basis.

Effective Date

The proposed amendments will take effect on the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-11. (1) General Fund; (2) Implementing Year 1998-99 is \$100,000; (3) 1st Succeeding Year 1999-00 is \$103,000; 2nd Succeeding Year 2000-01 is \$106,000; 3rd Succeeding Year 2001-02 is \$109,000; 4th Succeeding Year 2002-03 is \$113,000; 5th Succeeding Year 2003-04 is \$116,000; (4) Fiscal Year 1997-98 \$1,622,000; Fiscal Year 1996-97 \$1,337,000; Fiscal Year 1995-96 \$1,439,000; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

PART I. [WEIGHMASTERS] GENERAL

(Editor's Note: As part of this proposed rulemaking, the Department proposes to delete the text of Chapters 1 and 3, which currently appear at 70 Pa. Code pages 1-1-1-8, serial pages (244723)-(244730) and 3-1-3-4, serial pages (244731)-(244734).)

CHAPTER 1. (Reserved)

- § 1.1. (Reserved).
- §§ 1.11-1.14. (Reserved).
- § 1.21. (Reserved).
- §§ 1.31-1.33. (Reserved).
- § 1.41. (Reserved).

(Editor's Note: Chapters 2-10 are proposed to be added. The text has been printed in regular type to enhance readability.)

CHAPTER 2. GENERAL PROVISIONS

- Sec. 2.1. Definitions.
- 2.2. Contacting the Department.

§ 2.1. Definitions.

The following word and terms, when used in this title, have the following meanings, unless the context clearly indicates otherwise:

Act—The Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4101—4194.

Bureau—The Bureau of Ride and Measurement Standards in the Department.

CEWM—Certified Examiner of Weights and Measures—An individual who has successfully completed the training course or courses prescribed by NIST and approved by the Department in accordance with § 4.6 (relating to training courses), and who holds a current certificate issued by the Department in accordance with the certification standards in this chapter.

CEWM certificate—A document issued by the Department to a particular person to evidence that the named individual is a CEWM.

Certified UPC/PLU inspector—An individual who is certified by the Department as meeting the training and application requirements of Chapter 5 (relating to UPC scanning systems and PLU devices) and who is lawfully qualified to inspect UPC scanning systems and PLU devices for purposes of the testing and inspections required under section 4112(c) of the act (relating to general testing and inspections).

Commodity—Anything such as goods, wares, merchandise, compound mixture or preparation, products of manufacture or any tangible personal property which may be lawfully kept, sold or offered for sale or any product being transported by vehicle and sold or priced by weight, or any service priced by weight.

Commodity in package form—A commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale exclusive of auxiliary shipping container enclosing packages that individually conform to the requirements of the act. An individual item or lot of any commodity not in package form but on which there is a marked selling price based on an established price per unit of weight or measure shall be construed to be a commodity in package form.

Consumer package or package of consumer commodity—A commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions and which usually is consumed or expended in the course of consumption or use.

Commercial feed facility—Each separate mill or plant, whether fixed or mobile, or distributor of commercial feed or customer-formula feed, as those terms are defined in sections 5101—5115 of the act (relating to commercial feed act).

Cord—The amount of wood that is contained in a space of 128 cubic feet when the wood is racked and well stowed when used in connection with wood intended for fuel purposes.

Department—The Department of Agriculture of the Commonwealth.

Director—The Director of the Bureau.

Domestic consumers—Consumers in residences, apartment houses, stores, churches, office buildings and similar edifices, as distinguished from industrial plants.

Field standards—A standard that is calibrated against a reference standard, and is routinely used to calibrate or check material measures, measuring instruments or reference materials.

Food Act—31 P.S. §§ 20.1—20.18.

Food establishment—A retail food store and a room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food. The term includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits.

Inspector or State inspector—A State inspector of weights and measures.

IntraState commerce—All commerce or trade that is begun, carried on or completed wholly within the limits of this Commonwealth.

Introduced into intraState commerce—The time and place at which the first sale or delivery, or both, of a commodity is made within this Commonwealth, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

Licensed public weighmaster—A person holding a valid weighmaster's license issued in accordance with section 4151 of the act (relating to licenses) and Chapter 8 (relating to training program for inspectors and sealers), and authorized to issue weighmaster's certificates.

Light fuel oils—Kerosene, number one fuel oil, number two fuel oil, number three fuel oil and any similar oil used for domestic heating as distinguished from heavy industrial oils.

Memorandum of understanding—A written agreement pursuant to which the Department delegates to a city or county all or a portion of the enforcement duties and responsibilities assigned the Department under section 4121(a) of the act (relating to powers and duties of director and inspector) and this chapter, and that is otherwise in conformance with section 4125 of the act (relating to division of responsibilities) the requirements of section 4125 of the act.

NCWM—The National Conference on Weights and Measures.

NIST—The National Institute of Standards and Technology.

Nonconsumer package or package of nonconsumer commodity—A commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

Office standards—A complete set of copies of the State primary standards of weight and measure kept by the State Metrology Laboratory.

PLU—Price look-up—A pricing system where numbers are assigned to items or commodities, and the price is stored in a database for recall when the numbers are manually entered. PLU codes are used with scales, cash registers and point-of-sale systems.

PLU device—Price look-up device—A device that can access a database price file. The term includes bar code beam or contact scanners, Optical Character Recognition (OCR) scanners or readers, magnetic scanners or readers, alpha or numeric keyboards, or both, voice response systems and computer-based retail price retrieval systems.

PLU system—Price look-up system—A computer-based retail price retrieval system.

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Private certification program—A program under which a certified UPC/PLU inspector inspects a commercially used UPC scanning system or PLU device at least annually on an unannounced basis, and which otherwise conforms with section 4112(c) of the act and Chapter 5.

Public eating and drinking place—A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge, or a place which otherwise conforms to the definition in section 1 of the Public Eating and Drinking Place Law (35 P.S. § 655.1). The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Public Eating and Drinking Place Law—The act of May 23, 1945 (P.L. 926, No. 369) (35 P.S. §§ 655.1—655.13).

Public weighing—The weighing of any commodity for any commercial purpose.

Scanning system—A general term for any of the several types of PLU technologies capable of communicating with a database price file or retail price retrieval system. The term includes hardware, software and supporting computer systems.

Sealer—A sealer or deputy sealer of weights and measures of a city, county or joint city-county jurisdiction.

Secretary—The Secretary of the Department.

Sell or sale—Barter and exchange.

Single service device—A device that is designed to be used commercially only once and then discarded.

Solid fuel—Anthracite, semianthracite, bituminous, semibituminous or lignite coal, briquettes, boulets, coke, gashouse coke, petroleum coke, carbon, charcoal or any other natural, manufactured or patented fuel not sold by liquid or metered measure.

State standards—Standards of weight and measure which conform with the standards of the United States, which have been certified as being satisfactory for use as the State standards by NIST, which are maintained at the State Metrology Laboratory and which otherwise conform with section 4106 of the act (relating to state standard of weight and measure).

Type—A class the individual objects of which are similar to another in design construction, size and material.

UPC scanning system—A UPC scanning system.

UPC/PLU inspector's certificate—A document issued by the Department to a particular person to evidence that the named individual has successfully completed the training necessary for the person to be qualified to inspect UPC scanning systems and PLU devices for purposes of section 4112(c) of the act.

UPC—Universal product code—A general term for any of several types of bar code symbology. The term may refer to various versions of symbology developed by the Uniform Code Council, including UPC versions A or E of the Uniform Code Council: Codes 2 of 5, 3 of 9, 128 or any others available now or in the future.

Use in trade or commerce—Buying or selling goods, wares, merchandise or services.

Vehicle—A device in, upon or by which any property, produce, commodity or article is or may be transported or drawn.

Weights and measures—Weights and measures of every kind, instruments and devices for weighing and measuring and any appliances and accessories associated with any or all such instruments or devices.

(i) The term includes the following: parking meters, postal scales and other scales used to determine shipping charges, pill counters, grain moisture meters, coin-operated person weighers, coin-operated air dispensers and coin-operated axle and vehicle scales.

(ii) The term also includes PLU devices and UPC scanning systems in food establishments required to be licensed in accordance with the Food Act.

(iii) The term does not include portable scales used to determine compliance with 75 Pa.C.S. Ch. 49 (relating to size, weight and load), meters for the measurement of electricity, gas, natural or manufactured, steam, coolant or water or the counting or timing of telephone calls when the same are operated in a public utility system or taxi meters. These portable scales, electricity, gas, steam, coolant, water and telephone meters and taxi meters are specifically excluded from the purview of the act and none of the provisions of the act apply to the meters or to any appliances or accessories associated therewith.

§ 2.2. Contacting the Department.

For purposes of this title, a person may contact the Department at the following address:

Department of Agriculture
Bureau of Ride and Measurement Standards
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone Number: 717/787-9089
FAX Number: 717/783-4158

CHAPTER 3. (Reserved)

§ 3.1. (Reserved).

§ 3.2. (Reserved).

§§ 3.11—3.14. (Reserved).

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

Sec.	Purpose.
4.1.	CEWM.
4.2.	Authority of a CEWM.
4.3.	Categories and types of weighing or measuring devices.
4.4.	Certification standards.
4.5.	Training courses.
4.6.	Audit by Department.
4.7.	Applying for certification.
4.8.	CEWM certificate.
4.9.	Expiration of CEWM certificate.
4.10.	Obtaining a new CEWM certificate.
4.11.	Testing and inspection performance standards.
4.12.	Reporting procedures for CEWM.
4.13.	Inspection and testing by the Department.
4.14.	Suspension or revocation of certification.
4.15.	CEWM list.
4.16.	Civil penalties.
4.17.	

§ 4.1. Purpose.

This chapter sets forth the certification standards required under section 4110(a)(4) of the act (relating to specific powers and duties of department; regulations), under which the Department may approve training courses and certify persons as a CEWM for purposes of the act.

§ 4.2. CEWM.

A person may apply to the Department for certification that the person is a CEWM for purposes of the act and this title, with respect to one or more of the categories or types of weighing or measuring devices in § 4.4 (relating to categories and types of weighing or measuring devices).

§ 4.3. Authority of a CEWM.

(a) *General.* A CEWM may perform the annual testing and inspection of any weighing or measuring device which the Department is required to perform under section 4112(b) of the act (relating to general testing and inspections), and with respect to which the CEWM is certified. These weighing and measuring devices consist of commercially used small capacity retail computing scales, retail package shipping scales, vehicle scales, small platform scales which weigh items to 1,000 pounds, truck-mounted fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers. The Department may accept the report of a CEWM as sufficient to meet these statutory testing and inspection requirements.

(b) *Fees.* A CEWM may charge a fee for inspection and testing services.

§ 4.4. Categories and types of weighing or measuring devices.

The categories and types of weighing or measuring devices with respect to which a person may be certified as a CEWM are as follows:

- (1) Small capacity retail computing scales.
- (2) Retail package shipping scales.
- (3) Vehicle scales.
- (4) Small platform scales which weigh items to 1,000 pounds.
- (5) Truck-mounted fuel oil meters.
- (6) Truck-mounted liquid petroleum gas meters.
- (7) Compressed natural gas meters.
- (8) Retail motor fuel dispensers.

§ 4.5. Certification standards.

A person seeking a CEWM certificate from the Department shall do the following:

- (1) Successfully complete a training course prescribed by NIST and approved by the Department in accordance with § 4.6 (relating to training courses), for the category or type of weighing or measuring device with respect to which the certificate is sought.
- (2) Comply with the application and other requirements of this chapter.

§ 4.6. Training courses.

(a) *General approval of NIST training courses.* A training course now or hereafter prescribed by NIST and approved by the Department for a particular category or type of measuring or weighing device is hereby designated an appropriate training course for the subject category or type of weighing or measuring device. The Department will grant its approval of a training course prescribed by NIST by either including it on the list set in subsection (b) or by adding it to the list by publication in accordance with subsection (c).

(b) *List of current approved NIST training courses.* The current NIST training courses and the category or type of

weighing or measuring device with respect to which each is approved are as follows:

Course Number/Title	Category/Type
202/Retail Computing Scales	Small capacity retail computing scales
None	Retail package shipping scales
206/Vehicle and Axle-Load Scales	Vehicle scales
203/Medium-Capacity Scales	Small platform scales which weigh items to 1,000 pounds
303/Vehicle Tank Meters	Truck-mounted fuel oil meters
305/Liquified Petroleum Gas Liquid-Measuring Devices	Truck-mounted liquid petroleum gas meters
None	Compressed natural gas meters
302/Retail Motor-Fuel Dispensers and Consoles	Retail motor fuel dispensers

(c) *Changes to list.* The Department will update or revise the list of approved NIST courses in subsection (b) by publishing a notice describing this update or revision in the *Pennsylvania Bulletin*. The notice will include the course name and the category or type of weighing or measuring device, and indicate whether the course is being added or deleted.

(d) *Effect of addition of a course to list of approved courses.* If a course is added to the list described in subsection (c), a person who has successfully completed that course within 2 years prior to its inclusion on the list will be deemed to have completed the course requirement of the certification standards in § 4.5(1) (relating to certification standards).

§ 4.7. Audit by Department.

The Department may attend and audit an approved training course to ascertain whether the course is conducted in accordance with the act and in conformity to NIST standards or applicable standards of the Department and the program syllabus. A person offering or conducting an approved training course shall, at least 7 days in advance of conducting an approved training course, mail or deliver to the Department written notification of the date, time and location of the training course. A person offering or conducting an approved training course shall allow the Department's auditors entry to the program and provide copies of course materials.

§ 4.8. Applying for certification.

(a) *Application required.* A person who has successfully completed a training course prescribed by NIST and approved by the Department in accordance with § 4.6 (relating to training courses) may apply to the Department for a CEWM certificate. Certification is granted through issuance of the certificate described in § 4.9 (relating to CEWM certificate).

(b) *Form of application.* A person seeking certification under the act may obtain an application form from the Department at the address in § 2.2 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

(1) The name and mailing address of the person seeking a certificate.

(2) The name, location and date of completion of any approved training course completed by the person seeking a certificate.

(3) A copy of any certificate of completion with respect to the approved training course.

(4) The category or type of weighing or measuring device with respect to which the certificate is sought.

(5) A detailed description of the equipment the person seeking the CEWM certificate will use in conducting inspections of the weighing or measuring devices of the category or type with respect to which certification is sought, with copies of applicable verifications of accuracy, inspection records and other documentation demonstrating the equipment is adequate and meets the requirements of § 6.3 (relating to field standards).

(6) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.

(7) The date of the application.

(8) Other information the Department might reasonably require.

(c) *Departmental action on application.* The Department will, within 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation. If the Department requests additional clarification or documentation, its review and consideration of the application will cease until the requested material is received, at which time the 30-day review period shall begin again.

§ 4.9. CEWM certificate.

(a) *Form of CEWM certificate.* The Department will format the CEWM certificate into an identification card sized document, so it may be carried conveniently on a CEWM's person while performing inspections or tests under authority of that certificate.

(b) *Contents of CEWM certificate.* A CEWM certificate will bear the following information:

(1) The name of the person to whom it is issued.

(2) The category or type of weighing or measuring device with respect to which the person is certified.

(3) The expiration date of the certificate, which, in accordance with § 4.10 (relating to expiration of certificate), is 3 years from the date of issuance.

(4) A unique identification number.

(5) A photograph of the person to whom it is issued.

(6) A statement that the Department has determined the person identified on the certificate to be a "Certified Examiner of Weights and Measures" with respect to the category or type of weighing or measuring device identified on the certificate.

(7) Other information the Department might reasonably include.

(c) *Ownership of CEWM certificate.* A CEWM certificate issued by the Department will remain the property of the Department. A CEWM or other person having physical possession of a CEWM certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(d) *Obligation to produce CEWM certificate for inspection.* A CEWM shall have the CEWM certificate with him

whenever performing inspections or tests under authority of that certificate, and shall produce the certificate for inspection upon demand by the Department or a person on whose behalf the CEWM is performing the inspection or test.

§ 4.10. Expiration of CEWM certificate.

A CEWM certificate will expire no greater than 3 years from the date it is issued.

§ 4.11. Obtaining a new CEWM certificate.

(a) *No renewals; new certificate required.* The Department will not renew a CEWM certificate or extend the expiration date of a certificate. A person shall, instead, apply for and obtain a new CEWM certificate in accordance with § 4.8 (relating to applying for certification) to remain a CEWM.

(b) *Training course.* A person who is applying for certification applicable to a category or type of weighing or measuring device with respect to which the person is or has been a CEWM shall have successfully completed one of the following within 2 years of the date of the application form:

(1) A training course as described in § 4.6 (relating to training courses) applicable to that same category or type.

(2) A training course developed and approved by the Department applicable to that same category or type. The Department will publish a list of these approved training courses in the *Pennsylvania Bulletin*, and update this list to keep it current.

(c) *Timing of application.* A person may apply for a CEWM certificate at any time. A current CEWM who seeks to avoid any lapse in certification is encouraged to apply for certification at least 60 days in advance of the expiration date of his current certificate.

§ 4.12. Testing and inspection performance standards.

The Department has adopted the applicable NIST standards as its testing and inspection performance standards.

§ 4.13. Reporting procedures for CEWM.

(a) *Inspection report form required.* A CEWM shall prepare and submit to the Bureau an inspection report form, describing all of the weighing or measuring devices inspected at a particular location on a particular date.

(b) *Preparation and expense of acquiring forms.* The Department will provide a sample inspection report form upon the request of a CEWM. This sample form may be copied at the CEWM's expense.

(c) *Contents of inspection report form.* A completed inspection report form shall contain the following information:

(1) The printed name of the CEWM.

(2) The identification number of the CEWM. This number appears on the CEWM certificate.

(3) The date of the inspection.

(4) The location of the inspection.

(5) The category or type of each weighing or measuring devices inspected.

(6) The manufacturer, model and serial number of each device inspected.

(7) A description of any defects or deficiencies in the weighing or measuring device inspected, and whether they have been repaired or rectified.

(8) A statement of whether the weighing or measuring device is in compliance with NIST performance standards.

(9) The signature of the CEWM.

(d) *Distribution of forms.* A completed inspection report form shall be distributed as follows:-

(1) The CEWM shall distribute the original of this form to the owner of the weighing or measuring device inspected, or to a responsible person at the site where the inspection occurred.

(2) The CEWM shall forward a copy of this form to the Department by mailing or delivering it to the Department by the 10th day of the month immediately following the month the inspection was conducted. Delivery may be accomplished by electronic means such as modem transmission/E-mail or facsimile transmission (FAX) machine. If delivery is accomplished by FAX machine, the CEWM shall retain the transmittal receipt as proof of compliance with this requirement.

(3) The CEWM shall retain a copy of this form and any transmittal receipt evidencing delivery of the form to the Department for at least 3 years from the date the testing and inspection services are performed.

§ 4.14. Inspection and testing by the Department.

(a) *Random inspection and testing.* In accordance with section 4110 of the act (relating to specific powers and duties of department; regulations), the Department will conduct random inspection and testing of a sample of devices that have been inspected and tested by a CEWM to determine whether the CEWM conducted the inspection and testing in accordance with the act and this chapter.

(b) *Inspections generally.* In addition to the random inspection and testing described in subsection (a), the Department may conduct inspection and testing of any device that has been inspected and tested by a CEWM.

(c) *Time lapse affecting results.* In evaluating the inspection and testing performed by the CEWM, the Department will take into account any lapse of time between an inspection performed by the Department and the inspection performed by the CEWM.

(d) *Reporting of results.* Within 30 days following a random inspection, the Department will mail the CEWM written notice of the inspection and the results of that inspection.

(e) *Use of results.* The Department may use the results of its inspection and testing to suspend or revoke the certificate of a CEWM in accordance with § 4.15 (relating to suspension or revocation of certification), or as the basis for a warning or instruction directed to the CEWM.

§ 4.15. Suspension or revocation of certification.

(a) *Basis for action.* The Department may suspend or revoke a CEWM certificate if the certificate holder does one or more of the following:

- (1) Violates a provision of this chapter.
- (2) Violates a provision of the act.

(3) Violates an applicable NIST standard, unless that standard is inconsistent with the act or this chapter.

(4) Intentionally or fraudulently reports inaccurate information on an inspection report form.

(5) Is found, following inspection and testing by the Department in accordance with § 4.14 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed testing and inspections of the category or type of weighing or measuring device with respect to which the certificate was issued.

(b) *Notice.* The Department will provide a CEWM with written notice of its intention to suspend or revoke certification, which will afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) *Delivery of notice.* The Department will deliver the notice described in subsection (b) to the affected certificate holder by personal service or by regular mail to the address provided by the certificate holder on his application for certificate under § 4.8 (relating to applying for certification), or to the address most recently provided to the Department in writing by the CEWM as the address to which notices should be sent.

§ 4.16. CEWM list.

(a) *CEWM list to be maintained.* The Department will maintain a current CEWM list containing the following information with respect to each CEWM:

- (1) The name and address.
- (2) The telephone number.
- (3) The facsimile number (if available).
- (4) Each category or type of weighing or measuring device with respect to which the CEWM is certified.
- (5) The expiration date of certification.

(6) The unique identification number of the CEWM's certificate.

(b) *Distribution of copies.* The Department will provide a copy of the current CEWM list upon request.

§ 4.17. Civil penalties.

(a) *General.* The Department may assess a civil penalty of up to \$10,000 against any person that violates a provision of the act or this chapter. In determining the amount of a civil penalty, the Department will consider the gravity of the violation.

(b) *Notice.* The Department will provide a person written notice of any violation of the act or this chapter and an opportunity for an administrative hearing on the violation prior to the imposition of a civil penalty.

(c) *Warning.* If the Department determines a violation did not cause harm to the public interest, the Department may issue a warning in lieu of assessing a civil penalty.

CHAPTER 5. UPC SCANNING SYSTEMS AND PLU DEVICES

GENERAL

Sec.	Purpose.
5.1.	Purpose.
5.2.	Requirement of annual testing and inspection.
5.3.	Testing and inspection standards.
5.4.	Certified UPC/PLU inspector.
5.5.	Authority of Certified UPC/PLU inspector
5.6.	Certification requirements.
5.7.	Training courses.
5.8.	Applying for certification.
5.9.	UPC/PLU inspector's certificate.
5.10.	Expiration of UPC/PLU inspector's certificate.
5.11.	Obtaining a new UPC/PLU inspector's certificate.

- 5.12. Inspections: reporting procedures.
- 5.13. Inspections: enforcement levels.
- 5.14. Inspection and testing by the Department.
- 5.15. Suspension or revocation of certification.
- 5.16. Certified UPC/PLU inspector list.

PRIVATE CERTIFICATION PROGRAMS

- 5.21. Registration.
- 5.22. Requirements and fees.
- 5.23. Program list.

§ 5.1. Purpose.

Section 4112(c) of the act (relating to general testing and inspections) requires the inspection of all commercially used UPC scanning systems and PLU devices within this Commonwealth by June 30, 1999, and thereafter at intervals of no greater than 12 months. It is the purpose of this chapter to accomplish the following:

- (1) Establish the Department's specifications, tolerances and procedures with respect to the inspection of UPC scanning systems and PLU devices, and supplant Chapter 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices—statement of policy) as authorized in section 4112(d) of the act.
- (2) Identify the minimum level of training necessary for a person to be qualified to inspect UPC scanning systems and PLU devices.
- (3) Establish a procedure by which a person may apply to the Department to become a certified UPC/PLU inspector.
- (4) Prescribe a procedure under which the Department can review inspections performed by certain certified UPC/PLU inspectors and revoke or suspend certification.
- (5) Establish minimum requirements for the "private certification programs" referenced in section 4112(c) of the act.
- (6) Otherwise comply with the requirements of section 4112(c) of the act.

§ 5.2. Requirement of annual testing and inspection.

- (a) *General requirement.* The Department will, by June 30, 1999, and within every 12-month period thereafter, inspect and test each commercially used UPC scanning system and PLU device in this Commonwealth to ascertain if it is correct, unless the system or device is inspected by a city or county sealer, as described in subsection (b), or the system or device is exempt from inspection, as described in subsection (c).
- (b) *Delegation of inspection responsibilities.* The Department may assign responsibility for conducting the testing and inspections described in subsection (a) to a city or county by a memorandum of understanding between the Department and the city or county entered into in accordance with section 4125 of the act (relating to division of responsibilities).

(c) *Exemption for UPC scanning systems and PLU devices inspected by a private certification program.* A commercially used UPC scanning system or PLU device is exempt from the annual testing and inspection described in subsection (a) if the following apply:

- (1) The system or device is inspected at intervals of no greater than 1 year.
- (2) The inspection is unannounced.
- (3) The inspection is conducted as part of a private certification program.

(4) The private certification program has registered with the Department in accordance with § 5.17 (relating to private certification programs: registration).

(5) The certified UPC/PLU inspector conducting the inspection on behalf of the private certification program files a price verification inspection report with the Department in accordance with the procedure described in § 5.12 (relating to inspections: reporting procedures).

(6) The private certification program meets the requirements of this chapter.

§ 5.3. Testing and inspection standards.

(a) *Standards.* The "Examination Procedures for Price Verification" adopted by the NCWM in Publication No. 19 (August 1995), or any subsequent amendment thereof, are adopted as the specifications and tolerances of the Department with respect to commercially used UPC scanning systems and PLU devices.

Example: A certified UPC/PLU inspector shall evaluate "errors" and the "accuracy" of UPC scanning systems and PLU devices in accordance with the "Examination Procedure for Price Verification" in NCWM Publication No. 19 (August 1995), which requires that a UPC scanning system or PLU device have an accuracy rate of 98% or higher to "pass" an inspection.

Example: A certified UPC/PLU inspector shall verify the price of sale items by allowing the sales clerk to determine the price of the item using the store's customary procedures, including manually entering discounts, in accordance with Paragraph 7.3, Note 3, of the "Examination Procedure for Price Verification" set forth in NCWM Publication No. 19 (August 1995).

(b) *Applicability.* The standards described in subsection (a) will be used by any person conducting testing and inspection of a commercially used UPC scanning system or PLU device in the capacity of a certified UPC/PLU inspector.

(c) *Obtaining Publication No. 19.* The Department will provide a copy of NCWM Publication No. 19 (August 1995), or any subsequent amendment thereof, at cost to any person requesting a copy.

§ 5.4. Certified UPC/PLU inspector.

A person shall be a certified PLU/UPC inspector to conduct an inspection of a commercially used UPC scanning system or PLU device described in section 4112(c) of the act (relating to general testing and inspections) regardless of whether the inspection is performed by a State inspector of weights and measures, an employee of a city or county acting in accordance with a memorandum of understanding entered into with the Department, or a person acting as part of a private certification program. A person may apply to the Department to become a certified UPC/PLU inspector.

§ 5.5. Authority of a certified UPC/PLU inspector.

(a) *General.* A certified UPC/PLU inspector is qualified to perform the annual testing and inspection of any commercially used UPC scanning system or PLU device which is required under section 4112(c) of the act (relating to general testing and inspections).

(b) *Limitation on authority.* A certified UPC/PLU inspector may exercise authority only in one of the following contexts:

(1) The certified UPC/PLU inspector is a State inspector of weights and measures.

(2) The certified UPC/PLU inspector is an employe of a city or county, and is acting in accordance with a memorandum of understanding entered into with the Department in accordance with section 4125 of the act (relating to division of responsibilities).

(3) The certified UPC/PLU inspector is acting as part of a private certification program.

(c) *Fees.* A certified UPC/PLU inspector may not charge a fee for inspection and testing services, unless that person is acting as part of a private certification program.

§ 5.6. Certification requirements.

(a) *General.* A person seeking to become a certified UPC/PLU inspector shall do the following:

(1) Successfully complete a training course in examination procedures for price verification as adopted by NIST/NCWM, and as described in § 5.7 (relating to training courses).

(2) Comply with the application requirements and other requirements of this chapter.

(b) *Persons certified under interim guidelines.* A UPC/PLU inspector's certificate issued in accordance with Chapter 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices—statement of policy) authorized by section 4112(d) of the act (relating to general testing and inspections) shall be considered a UPC/PLU inspector's certificate issued under this chapter.

§ 5.7. Training courses.

(a) *General approval of NIST/NCWM training courses.* The Department has approved any NIST/NCWM price verification training course utilizing the "Examination Procedure for Price Verification" in the NCWM Publication No. 19 (August 1995), or any subsequent successor publication thereto, as an approved training course for certified UPC/PLU inspector candidates.

(b) *Current approved NIST/NCWM training courses.* The current approved NIST/NCWM training courses are the "NIST/NCWM Price Verification Training" course and the "NIST/NCWM Price Verification Instructor's Training" course. An approved training course may be conducted by any person who has successfully completed the NIST/NCWM price verification instructor's training course.

(c) *New or additional training courses.* The Department will update or revise the list of approved NIST/NCWM training courses in subsection (b) by publishing a notice describing this update or revision in the *Pennsylvania Bulletin*.

(d) *Effect of addition of a course to list of approved courses.* If the Department approves a new or additional training course for certified UPC/PLU inspector candidates, a person who has successfully completed that course within 2 years prior to its approval will be deemed to have completed an approved course.

§ 5.8. Applying for certification.

(a) *Application required.* A person who has successfully completed an approved training course (as described in § 5.7 (relating to training courses)) within 2 years of the date of application may apply to be certified as a UPC/PLU inspector. Certification is granted through issuance of the certificate described at § 5.9 (relating to UPC/PLU inspector's certificate).

(b) *Form of application.* A person seeking to become a certified UPC/PLU inspector may obtain an application form from the Department at the address in § 2.2 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

(1) The name and mailing address of the person seeking a UPC/PLU inspector's certificate.

(2) Whether the applicant seeks to conduct UPC/PLU inspections as a State inspector of weights and measures, an employe of a city or county acting in accordance with a memorandum of understanding with the Department or as part of a private certification program.

(3) The name, location and date of completion of any approved training course completed by the person seeking a UPC/PLU inspector's certificate.

(4) A copy of any certificate of completion with respect to the approved training course.

(5) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.

(6) The date of the application.

(7) Other information the Department might reasonably require.

(c) *Departmental action on application.* The Department will, within 30 days of receiving an application, mail the applicant a UPC/PLU inspector's certificate, a disapproval notice or a request for additional clarification or documentation. If the Department requests additional clarification or documentation, its review and consideration of the application will cease until the requested material is received, at which time the 30-day review period will begin again.

§ 5.9. UPC/PLU inspector's certificate.

(a) *Form of certificate.* The Department will format the UPC/PLU inspector's certificate into an identification card sized document, so it may be carried conveniently on a certified UPC/PLU inspector's person while performing inspections or tests under authority of that certificate.

(b) *Contents of UPC/PLU inspector's certificate.* A UPC/PLU inspector's certificate will bear the following information:

(1) The name of the person to whom it is issued.

(2) The expiration date of the certificate, which, in accordance with § 5.10 (relating to expiration of UPC/PLU inspector's certificate), shall be 3 years from the date of issuance.

(3) A unique identification number.

(4) A photograph of the person to whom the certificate is issued.

(5) A statement that the Department has determined the person identified on the certificate to be a "Certified UPC/PLU inspector" in accordance with section 4112 of the act (relating to general testing and inspections).

(6) Other information the Department might reasonably include.

(c) *Ownership of UPC/PLU inspector's certificate.* A certificate issued by the Department will remain the property of the Department. A certified UPC/PLU inspector or other person having physical possession of a

certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(d) *Obligation to produce certificate for inspection.* A certified UPC/PLU inspector shall have the UPC/PLU inspector's certificate with him whenever performing inspections or tests under authority of that certificate, and shall produce the certificate for inspection upon demand by the Department or any person on whose behalf the certified UPC/PLU inspector is performing the inspection or test.

§ 5.10. Expiration of UPC/PLU inspector's certificate.

A UPC/PLU inspector's certificate will expire 3 years from the date it is issued.

§ 5.11. Obtaining a new UPC/PLU inspector's certificate.

(a) *No renewals: New certificate required.* The Department will not renew a UPC/PLU inspector's certificate or extend the expiration date of a certificate. A person shall, instead, apply for and obtain a new certificate in accordance with § 5.8 (relating to applying for certification) to remain a certified UPC/PLU inspector.

(b) *Training course.* A person who is applying for certification shall have successfully completed an approved training course as described in § 5.7 (relating to training courses) within 2 years of the date of the application form.

(c) *Timing of application.* A person may apply for certification at any time. A current certified UPC/PLU inspector who seeks to avoid any lapse in certification is encouraged to apply for a new UPC/PLU inspector's certificate at least 60 days in advance of the expiration date of the current certificate.

§ 5.12. Inspections: reporting procedures.

(a) *Inspection report form required.* A certified UPC/PLU inspector shall prepare and submit to the Bureau a price verification inspection report form with respect to any inspection the certified UPC/PLU inspector conducts. A copy of this price verification inspection form is set forth in Appendix A. The form is substantively identical to the "Appendix A Model Form—Price Verification Report" form set forth in the NCWM's Examination Procedure for Price Verification.

(b) *Acquiring forms.* The Department will provide a sample price verification inspection report form upon the request of a certified UPC/PLU inspector. This sample form may be copied at the certified UPC/PLU inspector's expense.

(c) *Distribution of forms.* A completed price verification inspection report form shall be distributed as follows:

(1) The certified UPC/PLU inspector shall distribute the original of this form to the owner of the systems and devices inspected, or to a responsible person at the site where the inspection occurred.

(2) The certified UPC/PLU inspector shall forward a copy of this form to the Department by mailing or delivering it to the Department by the 10th day of the month immediately following the month the inspection was conducted. Delivery may be accomplished by electronic means such as modem transmission/E-mail or facsimile transmission machine. If delivery is accomplished by a facsimile machine, the certified UPC/PLU inspector shall retain the transmittal receipt as proof of compliance with this requirement.

(3) The certified UPC/PLU inspector shall retain a copy of this form and any transmittal receipt evidencing delivery of the form to the Department for at least 3 years from the date the testing and inspection services are performed.

§ 5.13. Inspections: enforcement levels.

The "Model Enforcement Levels" in Section 11, Paragraph 11.2 of the NCWM's Examination Procedure for Price Verification, or any subsequent revision thereto, are adopted as the enforcement levels to be applied by the Department and certified UPC/PLU inspectors.

§ 5.14. Inspection and testing by the Department.

(a) *Inspections generally.* The Department may evaluate the performance of a certified UPC/PLU inspector who conducts inspections for a private certification program by conducting a follow-up inspection of any UPC scanning system or PLU device that has been inspected and tested by the certified UPC/PLU inspector.

(b) *Time lapse and other factors effecting results.* In evaluating the inspection and testing performed by a certified UPC/PLU inspector as described in subsection (a), the Department will consider any factor that might reasonably account for a variance between the Department's inspection results and those of the certified UPC/PLU inspector, including a lapse of time between an inspection performed by the Department and the inspection performed by the certified UPC/PLU inspector.

(c) *Reporting of results.* Within 30 days following a follow-up inspection, the Department will mail the certified UPC/PLU inspector written notice of the inspection and the results of that inspection.

(d) *Use of results.* The Department may use the results of its follow-up inspection to suspend or revoke a UPC/PLU inspector's certificate, as described in subsection (a), in accordance with § 5.15 (relating to suspension or revocation of certification), or as the basis for a warning or instruction directed to the certified UPC/PLU inspector.

§ 5.15. Suspension or revocation of certification.

(a) *Basis for action.* The Department may suspend or revoke a UPC/PLU inspector's certificate if the certificate holder conducts inspections for a private certification program and does one or more of the following:

- (1) Violates any provision of this chapter.
- (2) Violates any provision of the act.
- (3) Violates an applicable standard prescribed by NCWM's Examination Procedure for Price Verification, unless that standard is inconsistent with the act or this chapter.
- (4) Intentionally or fraudulently reports inaccurate information on a price verification inspection report form.
- (5) Is found, following inspection and testing by the Department in accordance with § 5.14 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed an inspection of a UPC scanning system or PLU device.

(b) *Notice.* The Department will provide a certified UPC/PLU inspector with written notice of its intention to suspend or revoke certification, which will afford that person notice and opportunity for an administrative hearing before the Department prior to the effective date of the suspension or revocation.

(c) *Delivery of notice.* The Department will deliver the notice described in subsection (b) to the affected certified UPC/PLU inspector by personal service or by regular mail to the address provided by the certified UPC/PLU inspector on the most recent application for a certificate, or to the address most recently provided to the Department in writing by the certified UPC/PLU inspector as the address to which notices should be sent.

§ 5.16. Certified UPC/PLU inspector list.

(a) *List to be maintained.* The Department will maintain a current list containing the following information with respect to each certified UPC/PLU inspector:

- (1) The name and address.
- (2) The telephone number.
- (3) The facsimile number, if available.
- (4) The expiration date of certification.
- (5) The unique identification number of the UPC/PLU inspector's certificate.

(b) *Distribution of copies.* The Department will provide a copy of the current certified UPC/PLU inspector list upon request.

PRIVATE CERTIFICATION PROGRAMS

§ 5.21. Registration.

(a) *General requirement.* A person who owns or operates a commercially used UPC scanning system or PLU device may avoid the requirement of annual State or local inspection described in section 4112(c) of the act (relating to general testing and inspections) by having the inspection performed by a private certification program. A private certification program shall meet the requirements of this chapter and shall, prior to commencing testing and inspection of commercially used UPC scanning systems or PLU devices, file a written statement with the Department, at the address in § 2.2 (relating to contacting the Department).

(b) *Contents of written statement.* The written statement referenced in subsection (a) shall contain the following:

(1) The name, business address and telephone number of the private certification program.

(2) The name of any certified UPC/PLU inspector who will be conducting UPC scanning system or PLU device inspections on behalf of the private certification program, together with the unique identification number appearing on that person's UPC/PLU inspector's certificate.

(3) The signature, printed name and title of the person making the statement.

(c) *Action by Department.* Within 30 days of receiving a written statement as described in subsection (b), the Department will mail the applicant a copy of the written statement bearing a legible stamp or seal indicating the original document has been filed with the Department.

(d) *Updating the written statement.* A private certification program shall, within 30 days of a change affecting the accuracy of a written statement it has filed with the Department, provide the Department an update of its written statement.

§ 5.22. Private certification programs: Requirements and fees.

(a) *Unannounced inspections required.* A certified UPC/PLU inspector conducting an inspection on behalf of a private certification program shall conduct that inspection on an unannounced basis.

(b) *Fees permitted.* A private certification program may charge a fee for its services—whether a per-inspection fee, a flat annual fee, a membership fee in an organization that conducts a private certification program for its members, or some other fee arrangement.

§ 5.23. Program list.

(a) *List to be maintained.* The Department will maintain a current list of private certification programs. The list will contain the name, business address, telephone number and facsimile number (if available) of each private certification program.

(b) *Distribution of copies.* The Department will provide a copy of the current private certification program list upon request.

PROPOSED RULEMAKING

5121

Appendix A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF RIDE & MEASUREMENT STANDARDS
2301 NORTH CAMERON STREET
HARRISBURG, PA 17110-9408

PRICE VERIFICATION REPORT

Page ___ of ___

Inspection: 1st 2nd 3rd Complaint: Frequency: Normal Increased Type: Stratified Automated Randomized

Location of Test (Store Name, Address, County, Zip Code)	Date:	Telephone:
	Manager:	Type of Store:

Identity, Brand Name, Item or Style Number	Number of Items, Size, Location in Store, or U.P.C. Code	Offered Price	Price Charged	Price Error in Cents ±
1.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
2.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
3.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
4.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
5.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
6.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
7.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			
8.				
<input type="checkbox"/> Stop Sale Issued <input type="checkbox"/> Corrected	Comments:			

Comments/Remarks:

Report Acknowledgement

Name/Title _____
Inspector _____ Time In: _____
Time Out: _____

Evaluation of Results:

___ Sample- ___ Not on File= ___ Adjusted Sample
___ Errors+ ___ Adjusted Sample= ___ Error in %
Accuracy ___ % Ratio: ___ Overcharges ___ Undercharges

Reinspection will be made within 30 days.

Original white - Bureau copy

Pink - Inspector's copy

Yellow - Company copy

**CHAPTER 6. REGISTRATION OF SELLERS,
INSTALLERS AND REPAIRERS OF WEIGHING
AND MEASURING DEVICES**

Sec.	Purpose.
6.1.	Registration requirement.
6.2.	Field standards.
6.3.	Registration procedure.
6.4.	Registration card.
6.5.	Newly-installed or repaired commercial weighing and measuring devices.
6.6.	Expiration/renewal of registration.

§ 6.1. Purpose.

This chapter establishes the program referenced in section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices), under which persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices shall register with the Department, maintain field standards that adequately test weighing and measuring devices being placed into commercial service and provide the Department notice of newly-installed commercial weighing and measuring devices.

§ 6.2. Registration requirement.

(a) *General registration requirement.* A person who is engaged in the business of selling, installing, servicing or repairing commercially used weighing and measuring devices shall maintain a current registration with the Department, as described in § 6.4 (relating to registration procedure).

(b) *Exception.* The registration requirement established in subsection (a) is not applicable in instances when the commercially used weighing and measuring device being sold, installed, serviced or repaired is a UPC scanning system, a PLU device or a component of either system or device.

§ 6.3. Field standards.

(a) *General requirement.* A person who is engaged in the business of installing, servicing or repairing commercially used weighing and measuring devices shall have, maintain and use field standards that are adequate to test and place weighing and measuring devices into commercial service, and otherwise meet the requirements of NIST Handbook 44, or any subsequent amendment thereof.

(b) *Adequate field standards.* For purposes of this chapter, field standards will not be considered adequate for use in placing commercially used weighing and measuring devices into service unless there exists a current verification of accuracy issued by the State Metrology Laboratory with respect to those field standards. This verification of accuracy may take the form of a "Report of Test for Weights and Measures Standards" or a similar document.

§ 6.4. Registration procedure.

(a) *Filing of registration form required.* A person who is engaged in the business of selling, installing, servicing or repairing commercially used weighing or measuring devices shall submit a complete registration form to the Department, unless the commercially used weighing and measuring device being sold, installed, serviced or repaired is a UPC scanning system, a PLU device or a component of either system or device.

(b) *Registration form.* A person seeking to register with the Department under this chapter may obtain a registration form from the Department at the address in § 2.2

(relating to contacting the Department). The prospective registrant shall complete the form and return it to that same address. The registration form shall require the following information:

(1) The name and mailing address of the person seeking to register with the Department.

(2) A designation of whether the person seeking to register with the Department is a seller, installer, servicer or repairer of commercially used weighing and measuring devices.

(3) The name and address of any business through which the person seeking to register with the Department is employed as a seller, installer, servicer or repairer of commercially used weighing or measuring devices.

(4) A designation of the category or type of weighing or measuring device sold, installed, serviced or repaired by the person seeking to register with the Department.

(5) If the person seeking to register with the Department is an installer, servicer or repairer of commercially used weighing or measuring devices, a copy of the current verification from the State Metrology Laboratory that the field standards used by that person are accurate.

(6) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.

(7) The date of the application.

(8) The signature of the person seeking to register with the Department.

(9) Other information the Department might reasonably require.

(c) *Departmental action on registration form.* The Department will, within 30 days of receiving a complete registration form, mail the person who filed the registration form a registration card. If the registration form is incomplete, illegible or otherwise deficient, the Department will notify the person who filed the registration form, in writing, of the problem and the action required to resolve it. If the Department notifies a person who filed a registration form of some deficiency, its review and consideration of the registration form will cease until the deficiency is corrected, at which time the 30-day review period shall begin again.

§ 6.5. Registration card.

(a) *Form of registration card.* The Department will provide a registrant under this chapter a registration card that may be carried conveniently on a registrant's person.

(b) *Contents of registration card.* A registration card will bear the following information:

(1) The name of the person to whom it is issued.

(2) The category or type of weighing or measuring device with respect to which the person is registered.

(3) The effective date of registration.

(4) The maximum expiration date of the registration, which, in accordance with § 6.6 (relating to expiration/renewal of registration), is 3 years from the date of registration.

(5) A unique identification number.

(6) A photograph of the person to whom it is issued.

(7) A statement that the person identified on the registration card has registered with the Department in

accordance with section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices).

(8) Other information the Department might reasonably include.

(c) *Ownership of registration card.* A registration card issued by the Department will remain the property of the Department. A registrant or other person having physical possession of the registration card shall, upon written notice from the Department, surrender and return the registration card to the Department.

(d) *Obligation to produce registration card for inspection.* A registrant under this chapter shall have the registration card with him whenever selling, installing, servicing or repairing a commercially used weighing or measuring device.

§ 6.6. Newly-installed or repaired commercial weighing and measuring devices.

(a) *Inspection required.* A newly-installed or repaired commercial weighing or measuring device, other than a UPC scanning system or PLU device, may not be used in commerce unless it has been inspected and sealed in accordance with the act and this part, or unless use in commerce occurs during a period of conditional short-term use as described in subsection (d).

(b) *Responsibilities of installer or repairer.* A registrant under this chapter shall promptly notify the Department of any commercial weighing or measuring device it installs or repairs. Although the initial notification may be made by telephone, written notice shall be mailed, faxed or delivered to the Department within 48 hours of the installation or repair. The written notice shall provide the following with respect to the device:

(1) The location of the newly-installed or repaired device, the date of the installation or repair and a statement of whether the device is a newly-installed device or a repaired device.

(2) The manufacturer's name or brand name.

(3) The model number listed on the device.

(4) The capacity of the device, if applicable.

(5) The serial number of the device.

(6) The category or type of weighing or measuring device to which the newly-installed or repaired device belongs.

(7) The name and telephone number of a contact person through which the Department, a county sealer or a city sealer may arrange an inspection of the device.

(c) *Responsibilities of inspector.*

(1) *State inspectors.* If the Department has not delegated inspection responsibility to a county sealer or city sealer, it will inspect the newly-installed or repaired weighing or measuring device at the earliest date practicable, but within 15 days of the installation or repair, and affix a seal (as required) if the device meets the requirements of the act and this part.

(2) *County sealers and city sealers.* If the Department has delegated this inspection responsibility to a county sealer or city sealer, it will promptly notify the sealer of the installation or repair and the sealer shall inspect the newly-installed or repaired weighing or measuring device at the earliest date practicable, but within 15 days of the installation or repair, and affix a seal (as required) if the device meets the requirements of the act and this part.

(d) *Conditional short-term use.* If the installer has fulfilled the responsibilities described in subsection (b), an uninspected newly-installed or repaired commercial weighing or measuring device may be used in commerce for a period of no more than 15 days from the date of installation or repair. If, for any reason, the inspection referenced in subsection (c) is not accomplished during this 15-day period of conditional short-term use, the device will be removed from commercial use until the inspection is completed.

§ 6.7. Expiration/renewal of registration.

If a person is registered under this chapter, registration shall expire 3 years from the date the registration card is issued. If, as a condition of registration in accordance with § 6.4(b)(5) (relating to registration procedure), the registrant was required to submit a copy of the current verification from the State Metrology Laboratory that the field standards used by that person are accurate, registration shall expire as of the expiration of that verification. Registration may be renewed by following the registration procedure in § 6.4 (relating to registration procedure).

CHAPTER 7. REGISTRATION AND REPORT OF INSPECTION OF COMMERCIAL WEIGHING AND MEASURING DEVICES.

Sec.	Purpose.
7.1.	Weighting and measuring devices affected.
7.2.	Requirement: registration of devices by owners.
7.3.	Report by inspectors.
7.4.	Registration process.

§ 7.1. Purpose.

This chapter is intended to establish the program described in section 4114 of the act (relating to registration and report of inspection and testing of weighing and measuring devices used for commercial purposes), requiring the registration and reporting of inspection and testing of those commercially used weighing and measuring devices required to be tested and inspected in accordance with section 4112 of the act (relating to general testing and inspections).

§ 7.2. Weighing and measuring devices affected.

The requirements of this chapter apply to the following:

(1) Weights and measures used in determining the weight, measurement or count of commodities or things sold, offered or exposed for sale on the basis of weight, measure or count.

(2) Weights and measures used in computing the basic charge for services rendered on the basis of weight, measure or count or of devices used to dispense services on time.

(3) Commercially used small capacity retail computing scales, retail package shipping scales, vehicle scales, small platform scales which weigh items to 1,000 pounds, truck-mounted fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers.

(4) Commercially used UPC scanning systems and PLU devices.

§ 7.3. Requirement: registration of devices by owners.

(a) *Owners required to register.* The owner of any weighing or measuring device described in § 7.2 (relating to weighing and measuring devices affected) shall register the device with the Department in accordance with the procedure in § 7.5 (relating to registration process).

(b) *Exception: certain establishments engaged in the retail sale of gasoline.* Subsection (a) notwithstanding, an establishment involved in the retail sale of gasoline for use in the fuel supply tanks of motor vehicles, which is required to obtain an annual liquid fuels permit from the Department of Revenue in accordance with 75 Pa.C.S. Chapter 90 (relating to Liquid Fuels and Fuels Tax Act) shall be exempt from the registration requirement.

§ 7.4. Report by inspectors.

(a) *City or county sealer.* A city or county sealer who tests or inspects a weight or measure described in § 7.2(1) or (2) (relating to weighing and measuring devices affected), in accordance with section 4112(a) of the act (relating to general testing and inspections) and under a memorandum of understanding with the Department, shall submit a monthly written report to the Department. This written report shall be submitted to the Department by the 15th day of each month, and shall describe the following with respect to work performed in the preceding month:

- (1) A summary of the work performed.
- (2) A description of the weights, measures and weighing and measuring devices inspected or tested, and the results of the inspection or test.
- (3) A description of the nature and result of all criminal prosecutions of violations of the act or this chapter.

(b) *CEWM.* A CEWM who tests and inspects a weighing or measuring device described in § 7.2(3) in accordance with section 4112(b) of the act shall report the inspection to the Department in the manner set forth at § 4.13 (relating to reporting procedures for certified examiners of weights and measures).

(c) *Certified UPC/PLU inspector.* A certified UPC/PLU Inspector who tests and inspects a UPC scanning system or PLU device described in § 7.2(4) in accordance with section 4112(c) of the act shall report the inspection to the Department in the manner in § 5.12 (relating to inspections: reporting procedures).

§ 7.5. Registration process.

(a) *Obtaining a registration form.* The Department will provide a weighing or measuring device registration form upon request. The form will be formatted so that multiple devices can be registered using a single form. In lieu of the form provided by the Department, a person may use a form of his own construction, if the information in subsection (b) appears in a legible and understandable fashion on the document.

(b) *Required information.*

(1) *Information to be included.* A weighing or measuring device registration form shall require the following information:

- (i) The name and address of the person registering the device.
- (ii) The location of the device.
- (iii) The manufacturer's name or brand name.
- (iv) The model number listed on the device.
- (v) The capacity of the device, if applicable.
- (vi) The serial number of the device.
- (vii) The category or type of weighing or measuring device to which the newly-installed device belongs.

(2) *Exception.* If the weighing or measuring device being registered is a UPC scanning system or PLU

device, the registrant may provide the information required under paragraph (1)(i) and (ii), and provide a general description of the various components of the system or device rather than the information required under paragraphs (1)(iii)–(vii).

(c) *Time for filing the form.*

(1) *General.* A person required to file a registration form shall do so within 30 days of the installation of a weighing or measuring device with respect to which registration is required, unless the registrant belongs within one of the categories of registrant described in paragraph (2), (3) or (4).

(2) *Food establishments.* A food establishment shall register its weighing and measuring devices at the same time it submits its annual registration to the Department under the Food Act.

(3) *Public eating and drinking places.* A public eating and drinking place shall register its weighing and measuring devices at the time it submits its annual license fee under the Public Eating and Drinking Place Law.

(4) *Commercial feed facilities.* A commercial feed facility shall register its weighing and measuring devices at the time it submits its annual license fee under section 5103 of the act (relating to licensing).

(d) *Action by Department.* The Department will review each registration form it receives under this chapter and, within 30 days of receiving the form, mail the registrant a registration document or a written request for clarification of any inaccurate or illegible material on the form. If the Department requests additional clarification, its review and consideration of the registration form will cease until the requested clarification is received, at which time the 30-day review period shall begin again.

(e) *Registration document.* The registration document shall be in the form of a letter from the Director appended to a copy of the registration form. Registration shall remain valid until the registered device is moved to a new location.

CHAPTER 8. TRAINING PROGRAM FOR INSPECTORS AND SEALERS

Sec.	Purpose.
8.1.	Purpose.
8.2.	General adoption of NIST training program.
8.3.	Training with respect to individual types of weighing and measuring devices.
8.4.	Prior training.
8.5.	Supplemental or refresher training.

§ 8.1. Purpose.

This chapter is intended to establish the minimum training requirements for State inspectors, county sealers and city sealers, under section 4115 of the act (relating to training program).

§ 8.2. General adoption of NIST training program.

(a) *General.* The training program prescribed by NIST for inspectors and sealers of weights and measures is hereby adopted as the minimum training requirement for State inspectors, county sealers and city sealers under the act and this title:

(b) *NIST training course 102.* As of January 1, 2000, a State inspector, county sealer or city sealer shall successfully complete NIST training course 102, entitled "Introduction to Handbook 44," or any successor course thereto, to meet the minimum training requirements of the act and this chapter.

§ 8.3. Training with respect to individual types of weighing and measuring devices.

An inspector or sealer shall successfully complete applicable NIST training with respect to each type of weighing or measuring device he seeks to test or inspect under authority of the act. In addition to the general training described in § 8.2 (relating to general adoption of NIST training program), the following training or certification, or both, is required of persons who inspect or test particular types of weighing or measuring devices:

(1) *UPC scanning systems and PLU-devices.* A State inspector, county sealer or city sealer shall be a certified UPC/PLU inspector, as described in Chapter 5 (relating to UPC scanning systems and PLU devices), as a prerequisite to inspecting UPC scanning systems or PLU devices for purposes of the act.

(2) *Types of weights and measures listed in § 4.4.* A State inspector, county sealer or city sealer shall successfully complete the applicable training course in § 4.6(b) (relating to training courses), or any updated list published in accordance with § 4.6(c), as a prerequisite to inspecting or testing any of the categories and types of weighing and measuring devices in § 4.4 (relating to categories and types of weighing and measuring devices) for purposes of the act.

(3) *Other weights and measures with respect to which NIST training courses exist.* If there exists a NIST training course applicable to a specific category or type of weighing and measuring device not described in paragraph (1) or (2), a State inspector, county sealer or city sealer shall successfully complete that training course as a prerequisite to inspecting or testing that category or type of device for purposes of the act.

§ 8.4. Prior training.

A State inspector, county sealer or city sealer who has successfully completed a NIST training course prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this chapter.), and who has continued to work as a State inspector, county sealer or city sealer since completing the course, shall be deemed to have met the minimum training requirements of this chapter with respect to any category or type of weighing and measuring device addressed in that NIST training course.

§ 8.5. Supplemental or refresher training.

The Department may develop supplemental training courses or refresher courses for State inspectors, county sealers or city sealers. The Department may require the successful completion of such a course by a State inspector, county sealer or city sealer by providing the inspector or sealer written notice of this requirement. The Department will afford an inspector or sealer at least 6 months within which to complete the training course or refresher course, and will schedule adequate course sessions to allow all inspectors and sealers to attend.

CHAPTER 9. WEIGHMASTERS

GENERAL

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§ 9.1. Purpose.

This chapter is intended to establish terms, conditions and procedures applicable to the licensure and performance of licensed public weighmasters in accordance with Subchapter C of the act (relating to public weighmasters).

§ 9.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- Gross weight*—Total weight of vehicle and load.
- Net weight*—Gross weight less tare weight.
- Public weighing*—The weighing of any commodity for any commercial purpose.
- Tare weight*—The actual weight of only the vehicle.
- Weighmaster's certificate*—A document in the format set forth in § 9.11 (relating to weighmaster's certificate), evidencing that the issuer is licensed by the Department in accordance with section 4151 of the act (relating to licenses), has weighed the material described in that document on an approved scale which has been tested for accuracy and has complied with relevant provisions of this subchapter.

§ 9.3. License required.

A person may not assume the title "licensed public weighmaster" or any title of similar import, perform the duties or acts to be performed by a licensed public weighmaster under the act or this chapter, hold himself out as a licensed public weighmaster, issue any weighmaster's certificate, ticket memorandum or statement or engage in the full-time or part-time business of public weighing unless the person holds a valid license as a licensed public weighmaster.

§ 9.4. Qualifications.

A person shall meet the following requirements to be qualified to apply for a public weighmaster's license:

- (1) The prospective applicant shall be at least 18 years of age as of the date of application.
- (2) The prospective applicant shall own or have use of a type of weighing device approved by the Bureau in accordance with Subchapter D of the act (relating to device type approval) and with Chapter 10 (relating to device type approval) and approved by a weights and measures officer of the Commonwealth for use as of the date of application.

§ 9.5. Application for public weighmaster's license.

(a) *Obtaining an application form.* The Department will provide a person an application form for a public weighmaster's license upon request. Requests should be directed to the Department at the address in § 2.2 (relating to contacting the Department).

(b) *Requirements of the form.* The application form for a public weighmaster's license shall require the following information of the applicant:

(1) The name and address of the business for which the licensed public weighmaster would be conducting weighing.

(2) The name, address and age of the applicant.

(3) The location of the scales where weighing would be conducted by the licensed public weighmaster.

(4) Verification that the scales referenced in paragraph (3) belong to a type of weighing device approved by the Bureau in accordance with Chapter 10 (relating to device type approval) and approved by a weights and measures officer of the Commonwealth for use as of the date of application.

(c) *License fee.* The fee for a public weighmaster's license is \$60. This fee shall be by check or money order made payable to the "Commonwealth of Pa."

(d) *Submitting the application and fee.* An applicant for a public weighmaster's license shall submit the application form and the license fee to the Department at the address in § 2.2 (relating to contacting the Department).

(e) *Departmental action on application.* The Department will, within 30 days of receiving an application form and the correct license fee, do one of the following:

(1) Mail the applicant a public weighmaster's license.

(2) If the application form is incomplete, illegible or otherwise deficient, the Department will mail the applicant written notice of the problem and the action required to resolve it. If the Department notifies an applicant of a deficiency, its review and consideration of the application will cease until the deficiency is corrected, at which time the 30-day review period will begin again.

(3) Refer the application to any county or city inspector of weights and measures for a report as to the accuracy of the statements made on the application, the suitability of the scales to be used by the applicant and other information the Department might reasonably require, and mail the applicant written notice of this referral and advise the applicant that the Department will complete its review of the application within 30 days of receiving the report from the entity to whom the application was referred.

§ 9.6. Term of license; subsequent licenses.

(a) *Term.* A public weighmaster's license is valid for 2 years from the date it is issued.

(b) *Subsequent licenses.* A licensed public weighmaster shall follow the application process described in § 9.5. (relating to application for public weighmaster's license) to acquire a new license. To avoid a lapse in licensure, a licensed public weighmaster is encouraged to apply for a new license at least 60 days in advance of the expiration of his current license.

(c) *Change of status.* If there is a change to any name or address provided the Department on the public weighmaster's license application, a licensed public weighmaster shall notify the Department of this change within 48 hours of its occurrence. Although this notification may be made by a telephone to meet this 48 hour deadline, the licensed public weighmaster shall subsequently mail or deliver written notice of this change to the Department within 7 days of its occurrence.

§ 9.7. Format of a public weighmaster's license.

A public weighmaster's license issued by the Department under this subchapter will contain the following:

(1) The name of the person to whom it is issued.

(2) A unique license number assigned to the public weighmaster.

(3) The name and address of the business for which the licensed public weighmaster conducts public weighing.

(4) The location of the scales where the licensed public weighmaster conducts public weighing.

(5) The date the license was issued.

(6) The date the license will expire.

(7) Other information the Department deems reasonable.

§ 9.8. Display of license required.

A licensed public weighmaster shall conspicuously display his license, or a photocopy of the license, at the place where the licensed public weighmaster is engaged in weighing.

§ 9.9. Commodities sold by weight.

Any commodity to be sold by weight in this Commonwealth shall be weighed by a licensed public weighmaster at the time of sale or delivery on scales which meet the following requirements:

(1) The scales are suitable for weighing the tare and gross weight of the vehicle or vehicle and trailer transporting the commodity.

(2) The scales are located within this Commonwealth.

(3) The scales are of a type approved by the Department in accordance with Subchapter D of the act (relating to device type approval) and Chapter 10 (relating to device type approval).

(4) The scales measure weights of greater than 1,000 pounds.

§ 9.10. Weighmaster's certificate.

(a) *Certificates required.* A licensed public weighmaster shall, at his own expense, supply himself with weighmaster certificates formatted in accordance with subsection (b). The Bureau will provide a sample weighmaster's certificate upon request.

(b) *Contents.* A weighmaster's certificate shall contain the following information:

(1) The kind and size of the commodity.

(2) The name and address of the seller.

(3) The name and address of the purchaser.

(4) The license number of the vehicle and trailer, or other means of permanent identification.

(5) The signature and license number of the licensed public weighmaster who weighed the commodity and who issued the weighmaster's certificate.

(6) The date and hour when weighed.

(7) The gross weight in avoirdupois pounds of the vehicle and the load, the tare weight and net weight of the commodity; and, where the load is divided into lots, the net weight of each lot.

(8) A sequential serial number.

(9) Other relevant information the licensed public weighmaster deems necessary.

(c) *Triplicate form.* A weighmaster's certificate shall be prepared in triplicate.

(d) *Distinguishing original from copies.* The original weighmaster's certificate shall bear the words "Customer's Copy," and the two copies shall bear the words "Void—Customer Do Not Accept."

(e) *Variations in format and size.* The form and size of a weighmaster's certificate may be such as to suit any system or accounting device, as long as the certificate otherwise meets the requirements of this subchapter.

§ 9.11. Issuing a public weighmaster's certificate.

(a) *General requirement.* A licensed public weighmaster shall issue a weighmaster's certificate with respect to any public weighing he conducts.

(b) *Required weighing device.* A licensed public weighmaster shall, when making a public weighing, use a weighing device which is of a type approved by the Department in accordance with Subchapter D of the act (relating to device type approval) and Chapter 10 (relating to device type approval), suitable for the weighing of the amount and kind of commodity to be weighed and which has been tested and approved for use by a weights and measures officer of the Commonwealth preceding the date of the weighing.

(c) *Order of issuance.* A licensed public weighmaster shall issue weighmaster's certificates in consecutive order of the serial numbers affixed thereon.

(d) *Computer generated, typewritten or indelible pencil.* The original weighmaster's certificate shall be computer generated, typewritten or made out in indelible pencil.

(e) *One licensed public weighmaster per certificate.* A public weighmaster's certificate shall be entirely the product of a single licensed public weighmaster. A licensed public weighmaster may not enter any weight value on a weighmaster's certificate unless the public weighmaster has personally determined that weight, and may not make any entry on a weighmaster's certificate of another licensed public weighmaster.

(f) *Clarity required.* A licensed public weighmaster shall issue a complete and accurate weighmaster's certificate that clearly shows what weights were actually determined. If the certificate form provides for the entry of gross, tare and net weights, and the licensed public weighmaster determines fewer than these three weights, the public weighmaster shall strike through or otherwise cancel these undetermined weights on the certificate. If weights recorded on a certificate were determined on different dates, the certificate shall clearly report these dates. If the weights recorded on the certificate were determined using different scales, the certificate shall clearly identify these scales.

(g) *Reweighing solid fuel.* A licensed public weighmaster may not reweigh or issue a weighmaster's certificate for solid fuel unless the motor vehicle operator has surrendered the original and all duplicate weighmaster's certificates in his possession pertaining to the solid fuel. The licensed public weighmaster shall attach these certificates to the scale copy of the new weighmaster's certificate. The new certificate shall be retained in a manner that may be easily reconciled with the previous certificate. These provisions notwithstanding, a duplicate copy of the original weighmaster's certificate may be returned to the operator of the vehicle if it is obliterated with a rubber stamp using the following legend:

This solid fuel has been reweighed and this certificate should not be accepted. Any attempt to use this certificate to deliver solid fuel should be reported to your local or State inspector of weights and measures at once.

(h) *Distribution of original and copies.*

(1) The original of a weighmaster's certificate shall be delivered to the purchaser of the commodity specified in the certificate at the time of delivery.

(2) One copy of a weighmaster's certificate shall be maintained at the place of weighing for at least 2 years. A copy of a weighmaster's certificate may be retained by the business selling or delivering the commodity.

§ 9.12. Retention and inspection of certificates.

A licensed public weighmaster is responsible to retain a copy of each weighmaster's certificate issued for at least 2 years. These records shall be subject to inspection or subpoena for use as evidence by any State, county or city inspector of weights and measures.

SOLID FUEL

§ 9.13. Weighmaster's certificate required.

(a) *Rule for lots exceeding 100 pounds.* A person may not sell, transport over a public highway, deliver or cause to be delivered or start out to deliver solid fuel in a lot in amounts exceeding 100 pounds unless each lot in each separate compartment of the vehicle or vehicle and trailer is accompanied by a weighmaster's certificate.

(b) *Exceptions.* The rule in subsection (a) does not apply to solid fuel when any of the following occur:

(1) The weighing takes place at the point of delivery or sale.

(2) The producer of the solid fuel furnishes proof, satisfactory to the Department or to an inspector of weights and measures, that the solid fuel being transported comes from the producer's own mine, is the producer's own property and is being transported for purposes other than sale.

(3) The sale transaction entails the sale of a boatload or railroad carload of solid fuel delivered directly from the boat or car to a purchaser and accepted as to weight by the purchaser on the bill of lading or other voucher issued by the carrier.

(c) *Rule for lots of 100 pounds or less.* A person may not sell, transport over a public highway, deliver or cause to be delivered or start out to deliver any solid fuel in a lot in amounts of 100 pounds or less unless each lot in each separate compartment of the vehicle or vehicle and trailer is accompanied by a weighmaster's certificate unless the solid fuel is in closed containers or closed bags and the following information is plainly printed on the container or bag or on a tag securely attached to the container or bag:

(1) The net contents of the container or bag (expressed in avoirdupois pounds).

(2) The type of solid fuel.

(3) The name, address, city, state and zip code of the seller.

§ 9.22. Sales by employer-producer to employees.

(a) *Sales generally.* If it is specified under the provisions of a contract, an employer-producer of solid fuel may sell solid fuel at cost, by cubic contents instead of weight, to its employees for their own use and consump-

tion. No solid fuel sold in this way may be transported over a public highway unless the operator of the vehicle possesses a certificate of origin.

(b) *Obtaining a certificate of origin.* The Department will provide a sample copy of a certificate of origin upon request. A sample certificate may be photocopied for use by a producer-employer.

(c) *Content of certificate of origin.* A certificate of origin shall require the following:

- (1) The name and address of the producer-employer.
- (2) A description of the type and approximate cubic volume of the solid fuel being transported.
- (3) The destination of the solid fuel.
- (4) A statement that the certificate of origin is issued in accordance with section 4168 of the act (relating to sales by employer-producer to employees).
- (5) The signature of the producer-employer or its agent.

(d) *Record retention.* A copy of any certificate of origin issued under section 4168 of the act shall be retained at the place of production for at least 2 years, and shall, during business hours, be subject to inspection or subpoena for use as evidence by any State, county or city inspector of weights and measures.

§ 9.23. Certificate affecting weighing requirements.

(a) *Authorization to haul without weighmaster's certificate.* If, for any good and sufficient reason, it is impossible to weigh solid fuel at the point of origin and if the solid fuel is loaded into vehicles by the producer but the sale is not consummated nor delivery actually started, and if the producer or merchant can prove to the satisfaction of the Department that a new scale cannot be purchased or repairs secured for a scale already installed, the Department will issue an authorization to haul the solid fuel on the public highway to the nearest available scale of a licensed weighmaster of the Commonwealth for a distance not to exceed 10 miles, at which point the gross, tare and net weight of the solid fuel is determined so that the producer of the solid fuel is able to consummate its sale and the trucker will be furnished with a proper weighmaster's certificate prior to the departure of the solid fuel for delivery to the consumer.

(b) *Certificate of transport.* A conveyor of solid fuel operating under this section shall have in his possession at all times during the period of transport from point of origin to place of weighing and departure for delivery a certificate of transport containing the following information:

- (1) The date on which the certificate is issued.
- (2) The time of leaving mine or breaker.
- (3) The name of the driver of vehicle.
- (4) The license number of the vehicle and trailer.
- (5) The name of the owner or lessor of the mine or breaker.
- (6) The location of the mine or breaker.
- (7) The location of the scale to which solid fuel is being conveyed.

(c) *Source and disposition of certificate of transport.* The certificate of transport shall be furnished by the owner or lessor of the mine or breaker and surrendered to the weighmaster upon issuance of the certificate of a weighmaster.

(d) *Registration.* An owner or lessor of mines or breakers operating under this section shall register with the county inspector of weights and measures in the county in which they are located the name and location of the mines or breakers and the names and locations of the scales to which they propose to transport solid fuel for the purpose of weighing before starting it out for delivery. A copy of this registration shall be filed with the Department, at the address in § 2.2 (relating to contacting the Department).

§ 9.24. Limitations of certificate for anthracite.

(a) *Certificate of quality required.* In the case of anthracite, except barley and the smaller sizes, being transported under § 9.23 (relating to solid fuel: certificate affecting weighing requirements), a weighmaster may not weigh the anthracite unless the certificate of transport is accompanied by the following certificate of quality, made out in ink or indelible pencil, in triplicate with the original bearing the legend "original" and the copies bearing the legend "copy" in 1 inch letters diagonally across the face, and sufficiently mutilated at the left end to permit it to be securely attached to the corresponding copies of the certificate of the weighmaster as provided in subsection (b):

CERTIFICATE OF QUALITY
PENNSYLVANIA ANTHRACITE STANDARDS LAW

Name of Producer _____

ADDRESS OF PREPARATION PLANT OR BREAKER _____

Weighmaster's Certificate Serial No. _____

Quality Certificate Serial No. _____

Date _____

Name and Address of Purchaser or Consignee: _____

Size of Anthracite _____

Model and Registration Number of Transporting Vehicle _____

ATTESTED: "STANDARD ANTHRACITE" or "SUBSTANDARD ANTHRACITE"
(State which kind)

(Name of Shipper) _____

By: _____
(Signature or facsimile signature)
(Officer, partner or owner)

(b) *Requirements.* The weighmaster may not deliver the certificate of the weighmaster to the transporter until the weighmaster has first inserted the serial number of the certificate of the weighmaster on copies of the certificate of quality and securely attached the certificate of quality to the appropriately corresponding copies of the certificate of the weighmaster including the scale copy.

§ 9.25. Responsibilities of weighmasters and shippers.

(a) *Weighmasters.* Weighmasters will be held responsible and their licenses will be subject to revocation for negligence, failure to abide by the requirements of this chapter or failure to reconcile their records.

(b) *Shippers.* Both the shipper and the weighmaster shall be held to strict accountability. If the provisions of §§ 9.21—9.24 and this section are not strictly observed, the license of the weighmaster, as well as authorization to transport from the preparation plant or breaker to weigh scales on a certificate of transport, will be revoked.

§ 9.26. Certificate of special transportation.

(a) *Requirement.* If coal is not offered for sale and it is necessary to transport the coal over the public highway from the point of mining, stripping operation or culm bank to railroad cars, coke ovens, breakers, washery or other form of preparation plants, the operator of the vehicle transporting the coal shall have in his possession a certificate of special transportation, containing the following information, written in ink or indelible pencil:

- (1) The date and time on which the certificate was issued.
- (2) The license number of the truck.
- (3) The name of the owner or lessor mine, stripping operation or culm bank.
- (4) The destination of the vehicle.
- (5) The purpose for which the coal is being transported; that is, coking, preparation for sale or railroad cars.

(b) *Issuance and surrender.* A certificate of special transportation shall be issued for each day to the driver of each truck by a responsible employe of the operator in charge of the mine, stripping or culm bank or of the preparation plant, at or before starting out for delivery for that day, and shall be surrendered at the point of delivery when the last load for the day is delivered, to a responsible employe at the operation, where the certificate shall be kept for 90 days.

(c) *Other requirements.* The certificates of special transportation shall be consecutively numbered, made in duplicate, and shall be furnished by and at the expense of the operator. The duplicate shall be retained at the point of issuance for 90 days.

§ 9.27. Issuance of weighmaster certificates with respect to mine track scales and tippie scales.

Weighmaster certificates, as prescribed by the act, may be issued by licensed weighmasters of mine track scales or tippie scales if there is compliance with the following provisions:

- (1) The operator of the vehicle shall present to the weighmaster a certificate of the weighmaster showing the tare weight, as weighed on a scale capable of weighing the vehicle, prior to loading.
- (2) The net weight being loaded in the vehicle shall be determined at the time of loading by weighing mine cars or buggies and deducting the tare weight of the mine cars or buggies.
- (3) The gross weight shall be determined by adding the tare and the net weight.

§ 9.28. Reweighing and issuance of certificates.

(a) *Conditions of reweighing.* A licensed weighmaster may not reweigh or issue a certificate of a weighmaster for solid fuel unless the motor vehicle operator has surrendered the original and duplicate certificates of a weighmaster in his possession pertaining to the solid fuel. These certificates shall be attached by the weighmaster to the scale copy of the new certificate which shall be issued and maintained in a manner that they may be easily reconciled. A duplicate copy may be returned to the operator of the vehicle if it is obliterated with a rubber stamp using the following legend:

This solid fuel has been reweighed and this certificate should not be accepted. Any attempt to use this certificate to deliver solid fuel should be reported to your local or State inspector of weights and measures at once.

(b) *Certain anthracite.* In the case of anthracite, except barley and the smaller sizes, before issuing the new certificates, the weighmaster shall accurately and legibly imprint on the original and each copy the complete certificate of quality required by the Anthracite Standards Law (73 P.S. §§ 261-269), as it appears on the surrendered certificates.

(c) *Consequence of failure to surrender weighmaster certificate.* If the operator refuses or fails to surrender the weighmaster certificate, the weighmaster shall refuse to weigh the vehicle.

§ 9.29. Reciprocity with New York.

Due to reciprocal policies of New York, the several county, city and State inspectors of weights and measures are authorized to recognize and accept weight certificates issued within a zone of 5 miles from the New York State border line, if solid fuel is weighed and the certificates are issued by a weighmaster licensed by New York, whose scales are located not more than 5 miles distant from the border line of this Commonwealth.

CHAPTER 10. DEVICE TYPE APPROVAL

Sec.	Purpose.
10.1.	Purpose.
10.2.	Prohibition with respect to unapproved devices.
10.3.	General standard for approval by Department.
10.4.	Basic procedure.
10.5.	Meeting the general standard for approval.
10.6.	Application and review.
10.7.	Certificate of approval.
10.8.	Marking of approved devices.
10.9.	Specifications, variations and tolerances with respect to device type approval.
10.10.	Fees.

§ 10.1. Purpose.

This chapter is intended to establish the procedures by which the Department will review and approve or disapprove each type of weighing and measuring device intended for commercial use or in commercial use within this Commonwealth, in accordance with Subchapter D of the act (relating to device type approval).

§ 10.2. Prohibition with respect to unapproved devices.

A person may not manufacture, offer or expose for sale or sell or give away for use in trade or commerce any weighing and measuring device of a type not approved in accordance with Subchapter D of the act (relating to device type approval) and this chapter.

§ 10.3. General standard for approval by the Department.

The Department will approve a type of weighing and measuring device if the type is so designed and constructed that it conforms to or gives correct results in terms of values derived therefrom, is reasonably permanent in its indication and adjustment and does not facilitate the perpetration of fraud.

§ 10.4. Basic procedure.

A person seeking approval of a type of weighing and measuring device shall follow the application procedure in § 10.6 (relating to application and review).

§ 10.5. Meeting the general standard for approval.

(a) *Certificate of conformance from NCWM.* The Department will approve a type of weighing and measuring device if a certificate of conformance has been issued by the National Type Evaluation Program administered by NCWM with respect to that particular type of weighing and measuring device.

(b) *Certificate of conformance from NIST.* The Department will approve a type of weighing and measuring device if a certificate of conformance has been issued by NIST with respect to that particular type of weighing and measuring device.

(c) *UPC scanning systems and PLU devices.* The Department will approve a type of UPC scanning system or PLU device if the person seeking approval can document to the Department's satisfaction that the type of weighing and measuring device meets the standard in § 10.3 (relating to general standard for approval by the Department).

§ 10.6. Application and review.

(a) *Obtaining an application.* A person seeking the Department's approval of a type of weighing and measuring device shall obtain an application form from the Department. The Department will provide the form upon request. The prospective applicant may contact the Department at the address in § 2.2 (relating to contacting the Department).

(b) *Contents of application form.* The application form shall require the following information:

- (1) The name and address of the applicant.
- (2) A detailed description of the type of weighing and measuring device with respect to which approval is sought.
- (3) A copy of any certificate of conformance issued by the National Type Evaluation Program administered by NCWM with respect to that type.
- (4) A copy of any certificate of conformance issued by NIST with respect to that type.
- (5) Other documentation necessary to a reasoned determination by the Department as to whether the type meets the general standard in §§ 10.3 and 10.5 (relating to general standard for approval by the Department; and meeting the general standard for approval). If a certificate of conformance as described in paragraph (2) or (3) is not submitted, a sample of the type—or specifications with respect to the type—shall be submitted as part of the application.

(6) Either a precise description of the manner in which devices of the type with respect to which approval is sought are clearly marked for purposes of identification with the name, initials or trademark of the manufacturer and with the manufacturer's designation which positively identifies the pattern or design of the device, or an explanation of the reason it is impracticable to mark the devices as required by this section and a request for a waiver of some or all of these marking requirements under section 4174 of the act (relating to marking of approved weights and measures).

(7) Other information the Department might reasonably require.

(c) *Submitting the application.* The applicant shall forward the completed application form to the address in § 2.2.

(d) *Review by Department.* The Department will complete its review of an application within 30 days of receiving a complete application form. If the Department requests additional information from an applicant, this 30-day period does not commence until the requested information is received. The Department will approve a type of weighing and measuring device if it meets the standards for approval described in §§ 10.3 and 10.5. The Department will mail the applicant either a certificate of approval or a notice of disapproval within that 30-day period. A notice of disapproval will contain an explanation of the basis upon which the decision to disapprove was made, and otherwise meet the requirements of section 4172 of the act (relating to certificates of approval; notice of disapproval appeals).

(e) *Review of decision to disapprove a device type.* An applicant shall follow the procedure in section 4172 of the act to obtain review of a decision by the Department to disapprove a device type.

§ 10.7. Certificate of approval.

(a) *Content of certificate.* A certificate of approval issued by the Department under this chapter will contain the following:

- (1) The name and address of the person to whom it is issued.
- (2) A description of the type of weighing and measuring device with respect to which approval is granted.
- (3) A reference to the requirement that devices of the approved type be clearly marked for purposes of identification with the name, initials or trademark of the manufacturer and with the manufacturer's designation which positively identifies the pattern or design of the device unless a waiver is obtained from the Department in accordance with section 4174 of the act (relating to marking of approved weights and measures).
- (4) The date of issuance of the certificate.
- (5) Other information deemed relevant by the Department.

(b) *Effect of issuance of certificate.* The issuance of a certificate of approval by the Department with respect to a type of weighing and measuring device confirms that the type meets the standards for device type approval in Subchapter D of the act (relating to device type approval) and this chapter, and is not a guarantee or verification of the correctness of any individual weight or measure belonging to that type.

§ 10.8. Marking of approved devices.

(a) *General.* A weighing and measuring device that is of a type approved under Subchapter D of the act (relating to device type approval) and this chapter shall be conspicuously, clearly and permanently marked in accordance with the representations made on the approval application, unless the Department grants an exception in accordance with section 4174 of the act (relating to marking of approved weights and measures).

(b) *UPC scanning systems and PLU devices.* The Department is satisfied it is generally impracticable to mark a UPC scanning system or PLU device as required under section 4174 of the act. The Department will issue a certificate to that effect to any manufacturer applying for the same. A certificate issued under this subsection exempts the system or device described therein from having to be marked as otherwise required under section 4174 of the act.

§ 10.9. Specifications, variations and tolerances with respect to device type approval.

(a) *General.* The specifications, variations and tolerances recommended by the NIST and published in the NIST Handbook 44, and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, variations and tolerances of the Department with respect to the approval of types of weighing and measuring devices under this chapter.

(b) *Meeting the standards.*

(1) If either the NIST or NCWM has issued a certificate of conformance with respect to a type of weighing and measuring device, that type shall be deemed to be in compliance with the specifications, variations and tolerances of the Department for device type approval.

(2) In determining whether to issue a certificate of approval with respect to a type of UPC scanning system or PLU device, the Department will apply the general standard for approval in §§ 10.3 and 10.5 (relating to general standard for approval by the Department; and meeting the general standard for approval).

§ 10.10. Fees.

(a) *Fees.* The State Metrology Laboratory may charge an applicant a fee for conducting the tests as might be required for device type approval under this chapter.

(b) *Exemption.* A city or county which is required to procure standards of weights and measures and additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.

PART II. PACKAGING AND LABELING

CHAPTER 21. GENERAL PROVISIONS

PRELIMINARY PROVISIONS

§ 21.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

[Act—The Weights and Measures Act of 1965 (73 P. S. §§ 1651—1692) (Transferred from 76 P. S. §§ 100-1—100-42 in 1978).]

Commodity in package form or package—A commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container containing packages that individually conform to the requirements of the act. An individual item or lot of a commodity not in package form, or which does not meet this definition, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be a commodity in package form.

Consumer package or package of consumer commodity—A commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household in connection with personal possessions and which is usually consumed or expended in the course of the consumption or use.

Nonconsumer package or package of nonconsumer commodity—A commodity in package form other than a consumer package [including], and particularly a package intended solely for industrial or institutional use or for wholesale distribution only.

§ 21.3. Adoption of "Uniform Regulation for the Method of Sale of Commodities."

(a) *General.* The Department adopts the "Uniform Regulation for the Method of Sale of Commodities," as adopted by the NIST in its Handbook 130, and supplements thereto and revisions thereof, as the method of sale of commodities in this Commonwealth.

(b) *Exception.* If any provision of the "Uniform Regulation for the Method of Sale of Commodities" contradicts any provision of the act or this title, the provision of the "Uniform Regulation for the Method of Sale of Commodities" may not be applied, and the relevant provision of the act or this title shall be applied.

(Editor's Note: As part of this proposed rulemaking, the Department proposes to delete the existing text of §§ 35.1—35.3 which appear at 70 Pa. Code pages 35-1 and 35-2, serial pages (244743) and (244744).)

CHAPTER 35. (Reserved)

§ 35.1. (Reserved).

§ 35.2. (Reserved).

§ 35.3. (Reserved).

(Editor's Note: As part of this proposed rulemaking, the Department proposes to delete §§ 39.1—39.20 which appear at 70 Pa. Code pages 39-1—39-13, serial pages (244747) to (244759).)

CHAPTER 39. (Reserved)

§§ 39.1—39.20. (Reserved).

[Pa. B. Doc. No. 98-1651. Filed for public inspection October 9, 1998, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 97]

Boating

The Fish and Boat Commission (Commission) proposes to amend § 97.1 (relating to personal flotation devices). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to the mandatory wearing of personal flotation devices (PFD).

A. *Effective Date.* 9/15/98

This proposed amendment, if approved on final rulemaking, will go into effect on January 1, 2000.

B. *Contact Person*

For further information on the proposed change, contact John F. Simmons, Director, Bureau of Boating and Education, (717) 657-4538, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
LEGAL OFFICE

March 17, 1999

RECEIVED
99 MAR 17 AM 10:18
INDEPENDENT REGULATORY REVIEW COMMISSION

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17120

Re: FINAL-FORM REGULATION
Department of Agriculture
Bureau of Ride and Measurement Standards
70 Pa. Code Chapters 1-10, 21, 35 and 39
I.D. No. 2-111
Proposed Rulemaking: 28 *Pennsylvania Bulletin*
5109 (October 10, 1998)
Final-Form Regulation Approved by
Office of General Counsel: March 16, 1999

Dear Sirs:

On behalf of the Pennsylvania Department of Agriculture, I hereby *withdraw* the above-captioned Notice of Final Rulemaking which was submitted to the Independent Regulatory Review Commission and the House and Senate Agriculture and Rural Affairs Committees on February 22, 1999.

I respectfully submit the enclosed *revised* regulatory package for review. This revised regulatory package differs from the withdrawn regulatory package in several respects:

- The "Emergency Suspension" provisions that had been included at §§ 4.15(d) and 5.15(d) (relating to suspension or revocation of certification) of the withdrawn Notice of Final Rulemaking have been *deleted* from the revised Notice of Final Rulemaking. This change was made at the behest of the Independent Regulatory Review Commission, which noted that the referenced provisions would conflict with the due process requirements prescribed by the statute at 2 Pa.C.S. § 504.
- General language describing the Department's discretion to require information necessary to its processing or consideration of various applications required under the final-form regulation have been revised to clarify the type of information the Department would require. These

Independent Regulatory Review Commission

March 17, 1999

Page 2

minor revisions are at §§ 5.8(b)(7), 6.4(b)(9), 6.5(b)(8), 9.7(7), 10.6(b)(7) and 10.7(a)(5) of the revised Notice of Final Rulemaking.

- On Page 14 of the Preamble, in the "Comment and Response" section, additional language has been added to address Representative Cappabianca's question regarding the exception set forth in § 6.2(b) of the final-form regulation (relating to registration requirement).

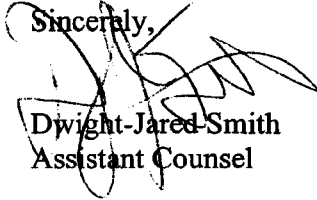
Please find enclosed a copy of the revised regulatory package. This material includes copies of the Preamble and Annex "A". A copy of the proposed regulation, as it appeared in the above-referenced edition of the *Pennsylvania Bulletin*, is also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to applicable Legislative Committees (the House and Senate Committees for Agriculture and Rural Affairs), and have been mailed or delivered to each commentator on this date.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,



Dwight-Jared Smith
Assistant Counsel

Enclosures

cc: Deputy Secretary Herr, w/o atts.
Gerald T. Osburn, Esq., w/o atts.
Charles Bruckner, w/o atts.
Paul Calvanelli, w/o atts.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-111
 SUBJECT:
 AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 99 MAR 17 AM 10:18
 INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/17/99	<u>C. DeLoach</u>	HOUSE COMMITTEE ON AGRICULTURAL & RURAL AFFAIRS
3/17/99	<u>M. Peterson</u>	
3/17/99	<u>G. Seale</u>	SENATE COMMITTEE ON AGRICULTURAL & RURAL AFFAIRS
3/17/99	<u>N. Bailey</u>	
3/17/99	<u>Dr. Helms</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

March 16, 1999