

REGULATORY ANALYSIS FORM

For use in providing information to the Independent Regulatory Review Commission pursuant to Section 5 of the Regulatory Review Act and for providing information to the Governor's Task Force on Regulatory Relief pursuant to Executive Order 1982-2 and Section 612 of the Administrative Code.

PART I: IDENTIFYING INFORMATION

| | | |
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| (1) Agency Department of Agriculture | (2) ID No. (Use Task Force No.) 2-111 | Date Received by IRRC: #1990 Harbison |
| (3) Short Title Weights, Measures and Standards | | |
| (4) Pa. Code Cite 70 Pa. Code Chapters 1-10, 21, 35 and 39 | (5) Agency Contact & Phone Number Charles Bruckner, Director, Bureau of Ride and Measurement Standards: 717-787-9089 | |
| (6) Type (check one) <input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final-Omitted Regulation | (7) Is a 120 day Emergency Certification Attached: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor | |
| (8) APPROVALS (Name & Date) Agency Head <u>Samuel E. Hayes, Jr.</u> 5-29-98 Samuel E. Hayes, Jr. Secretary of Agriculture | (Executive Agencies Only) Task Force _____ | |

PART II: BASIC ANALYSIS MATERIAL (Required by Sec. 5(a) of the Regulatory Review Act)

(9) Briefly explain the proposed regulation.

The Consolidated Weights and Measures Act (3 Pa.C.S. §§ 4101-4194) ("Act") places numerous enforcement responsibilities upon the Pennsylvania Department of Agriculture ("PDA"). The proposed regulation would assist PDA in implementing these enforcement responsibilities.

In summary, the proposed regulation would accomplish the following:

- (a) Establish definitions of terms relevant to weights and measures.
- (b) Prescribe a procedure by which PDA could designate a qualified person a "Certified Examiner of Weights and Measures" ("CEWM") with respect to a particular category of weighing or measuring device. A CEWM could then conduct inspections of that category of weighing or measuring device, and PDA would accept the CEWM's inspection report in lieu of PDA having to conduct the inspection itself.
- (c) Establish testing and inspection procedures with respect to Universal Product Code ("UPC") scanning systems and Price Look Up ("PLU") devices, establish training and certification requirements for persons who conduct inspections of these systems and devices, and supplant the "Interim Guidelines" on this subject authorized in the Act (at 3 Pa.C.S. § 4112(d))

(9) Continued

and published at 28 Pennsylvania Bulletin 2416 (May 23, 1998). These systems and devices comprise the "bar code scanner" technology familiar to consumers.

(d) Establish procedures with respect to the registration of sellers, installers and repairers of commercial weighing and measuring devices.

(e) Require the reporting of results of inspections of commercial weighing and measuring devices.

(f) Prescribe minimum training standards for persons conducting inspections of commercial weighing and measuring devices under the Act.

(g) Set standards and requirements for licensed public weighmasters, the issuance of weighmaster's certificates and the weighing of solid fuel.

(h) Prescribe the mechanism pursuant to which PDA would approve particular types of weighing and measuring devices for use in commerce in the Commonwealth.

(i) Revise or rescind certain current regulations to bring them into conformity with the Act and the proposed regulation.

(10) How does this regulation reduce costs of state and local government or private entities (business, consumers, etc.) within the Commonwealth?

The proposed regulation would not reduce the cost of State government. It is expected PDA will ultimately require additional personnel to effectively perform the duties assigned it by the Act. The proposed regulation would help keep these costs down, though, by establishing a mechanism for the certification of qualified persons to perform a **portion** of the inspections which PDA would otherwise be required to conduct itself.

The proposed regulation would not have any appreciable financial impact upon local governments. Under the Act, a county or city has the **option** to assume certain inspection and enforcement responsibilities from PDA pursuant to a memorandum of understanding. The proposed regulation would not put any greater burden on counties or cities than is already prescribed by the Act.

Businesses and consumers would both benefit from the proposed regulation. The ultimate effect of the proposed regulation should be to make commercial 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. These savings are not readily measurable.

(11) What is the statutory or other authority under which the regulation is proposed? (For state law cite Act and P.S. for federal law cite Act and U.S.C. For federal regulations cite C.F.R. or Federal Register. Be sure to cite court decisions, or consent decrees or attach copies of unpublished documents.)

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

(a) General authority to regulate as necessary for the performance of its responsibilities under the Act (3 Pa.C.S. §§ 4110 and 4190);

(b) Authority to require, through regulation, the registration of sellers, installers, servicers and repairers of commercially-used weighing and measuring devices (3 Pa.C.S. § 4113);

(c) Authority to require, through regulation, the registration and reporting of testing of commercially-used weighing and measuring devices (3 Pa.C.S. § 4114);

(11) Continued

- (d) The duty to establish, by regulation, minimum training standards for State inspectors and county and city sealers of weights and measures (3 Pa.C.S. § 4115);
- (e) Authority to regulate the method of sale of commodities in the Commonwealth (3 Pa.C.S. § 4127(c));
- (f) The duty to establish, by regulation, reasonable variations in weight, measure or count with respect to commodities (3 Pa.C.S. § 4128(b));
- (g) General authority to regulate with respect to public weighmasters (3 Pa.C.S. §§ 4150 and 4167);
- (h) Authority to regulate the weighing and measuring device types which must be reviewed and approved by the Department before being used in commerce in the Commonwealth (3 Pa.C.S. §§ 4170 and 4176)); and
- (i) Authority to regulate with respect to domestic fuel oil (3 Pa.C.S. § 4183(b)).

(12) Why is this regulation needed?

The proposed regulation is needed for a number of reasons.

Many of the provisions of the proposed regulations are required under the Act.

In addition, PDA has an urgent need to field a corps of trained, competent, certified inspectors to assist it in meeting the extensive inspection responsibilities imposed by the Act. Certified Examiners of Weights and Measures and Certified UPC/PLU Inspectors are expected to account for a large number of the inspections PDA would otherwise be required to conduct under the Act (at 3 Pa.C.S. § 4112(b) and (c)). The proposed regulation would establish these needed training and certification requirements.

The provisions requiring the registration of sellers, installers and repairers of commercial weighing and measuring devices, and the reporting of installations and repairs of these devices, will help PDA establish a database which can be used to more efficiently direct the limited resources of PDA, county sealers and city sealers.

Consumers and businesses also have need of the proposed regulation, for reasons more particularly set forth at Answer No. 10.

(13) What legal, accounting or consultant procedure will be required by the proposed regulation and who must comply with these procedures?

Although all persons who use commercial weighing or measuring devices in the Commonwealth would have to comply with the proposed regulations, the proposed regulations do not call for the establishment of any new legal or accounting procedures on the part of State government, local government, business or the public - beyond those prescribed by the Act.

A business would be free to retain the services of a qualified Certified Examiner of Weights and Measures to inspect any of the types of weighing or measuring devices described in the Act at 3 Pa.C.S. § 4112 (b). Similarly, a business might retain or join a "private certification program" which would conduct the unannounced inspections of UPC scanning systems and PLU devices described in the Act at 3 Pa.C.S. § 4112 (c). Although PDA does not believe these transactions amount to the "consultant procedures" referenced in the question, PDA opted to reference them in this answer.

(14) What additional reporting, record keeping and other paperwork will be required by the proposed regulation? (Attach copies of any available forms or reports which will be required in implementation of the proposed regulation.)

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

(14) Continued

- (a) Application for CEWM Certificate.
- (b) CEWM Certificate.
- (c) Application for UPC/PLU Inspector's Certificate.
- (d) UPC/PLU Inspector's Certificate.
- (e) Seller/Installer/Repairer registration form.
- (f) Seller/Installer/Repairer registration card.
- (g) Application for a Public Weighmaster's license.
- (h) Public Weighmaster's license.
- (i) Application for Review of Device Type.
- (j) 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 above at (b), (d) and (f), and for the applications referenced at (a), (c), (e) and (g).

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

(15) What is the suggested timetable for public comment, hearings, implementation, and what are various conformity deadlines (i.e. permits, licenses, etc.)?

PDA will afford the public a 30-day comment period following publication of the proposed regulations in the Pennsylvania Bulletin. PDA does not anticipate holding any hearings on the proposed regulations. PDA intends the regulations to take effect at the earliest date consistent with the requirements of the Regulatory Review Act.

(16) What types of persons, businesses and organizations will be affected by the regulation?

The proposed regulations would affect a large number of persons and businesses.

Any business that makes commercial use of a weighing or measuring device in the Commonwealth would be affected by this regulation. 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 regulation would also affect any person who seeks PDA's certification as either a CEWM or a Certified UPC/PLU Inspector. Once certified, such a person could offer his or her services for a fee.

The proposed regulation will affect consumers throughout the Commonwealth. The proposed regulations 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 regulations should result in greater accuracy and fewer errors with respect to merchandise pricing.

(17) What other regulations and State agencies will be affected by the regulation?

The proposed regulations would rescind the Interim Guidelines authorized by the Act (at 3 Pa.C.S. § 4112(d)) and published at 28 Pennsylvania Bulletin 2416 (May 23, 1998).

Although the Metrology Laboratory of the Department of General Services has a role under the Act, the proposed regulation does not expand or alter that role in any way.

PART III: REGULATORY FISCAL IMPACT (Required by Sec. 612 of the Administrative Code)

(18) Generally describe the costs imposed by this regulation upon state and local government.

As stated in Answer No. 10, above, it is expected PDA 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 requirements of the Act, rather than the proposed regulations, PDA estimates it will need 2 additional office personnel, at an estimated total cost of \$100,000 per year, to meet this obligation. PDA may also require additional field personnel, but is not certain if this will be necessary. This need for additional field personnel will depend on the extent to which city sealers, county sealers, CEWMs and private certification programs perform inspections PDA would otherwise be required to perform under the Act.

The proposed regulations would not impose appreciable costs on local government. 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.

(19) Are there Revenue Losses? Yes/No No. The proposed regulation is not expected to result (Attach Statement of method used to estimate) in any revenue losses.

State () Local () _____ ()

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(20) Are there increased program costs? Yes/No Yes. As stated, the Department will require at least 2 additional employees to meet its (Attach Statement of method used to estimate)

State (X) Local () _____ () responsibilities.

| | FY 98-9 | FY 99-0 | FY 00-01 | FY 01-02 | FY 02-03 | FY 03-04 |
|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Personnel | \$100,000 | \$103,000 | \$106,000 | \$109,000 | \$112,500 | \$115,900 |
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(21) What is the three-year expenditure history for programs affected by the regulation? (Attach statement of method used to estimate)

State (X) Local () _____ ()

| | 1994-95 | 1995-96 | 1996-97 | | | |
|--------------------|-----------|-----------|-----------|--|--|--|
| Weights & Measures | 1,436,000 | 1,439,000 | 1,337,000 | | | |
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(22) Has any increased cost been included in the current budget? Yes/No

If no, how will funds be obtained?

No. The Department will attempt to fund the cost of necessary additional employees from its current budget, and will address the need for additional funds in future budgets.

(23) Generally describe the costs imposed by this regulation on private entities. (e.g. consumers, business, etc.)

The proposed regulations would not impose any costs on consumers.

The proposed regulations 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 proposed regulations would require.

The proposed regulation would 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, PDA cannot offer a realistic estimate of the total costs involved.

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

Answer No. 16 sets forth additional information as to the entities that would be affected by the proposed regulation.

(24) What is the amount of reasonably measurable private costs?

PDA cannot offer a realistic estimate of the private cost that the promulgation of the proposed regulations would entail. If PDA conducts a required inspection of a commercial weighing or measuring device, it will not charge for this inspection. If a person elects to have an inspection performed by a CEWM or Certified UPC/PLU Inspector, the inspector may set and charge a fee for the inspection.

| | FY | FY | FY | FY | FY | FY |
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(25) Explain the types of benefits which arise from the regulations, and who receives these benefits.

The proposed regulation would benefit retailers by helping to bring about greater accuracy in merchandise pricing - thereby saving retailers the losses associated with undercharging.

In addition, consumers would benefit from a decrease in overcharging by retailers.

PDA would benefit by having a mechanism through which to certify qualified persons to conduct inspections and thereby lessen the number of inspections that would otherwise have to be performed by PDA personnel.

(26) If any of these benefits are measurable, what are their estimated value?

These benefits are not readily measurable

| | FY | FY | FY | FY | FY | FY |
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(27) Will the potential benefits outweigh the potential costs imposed? Explain.

Although the savings to consumers and retailers that are expected to result from promulgation of the proposed regulations can not be readily quantified, it is believed these savings will far exceed the costs of the proposed regulations. As stated, the estimated costs are expected to be low, and it is the Act, rather than the proposed regulations, that imposes these costs.

Modern markets should be based on the premise of "Truth in Labeling". It is anticipated that the consumer confidence that will arise from implementation of the Act and the proposed regulations will more than offset any cost the proposed regulation would entail.

(28) Has the regulation been drafted in a manner which maximized the difference between potential benefits and potential costs? Explain.

Yes. The proposed regulation would not cause any entity to incur a cost that is not otherwise required under the Act.

For example, the proposed regulation would adopt a nationally recognized standard - the NCWM's "Examination Procedure for Price Verification" - as the training standard for Certified UPC/PLU Inspectors. This should help keep training costs to a minimum, since a number of potential inspectors have already taken this training. This helps maximize the difference between potential costs and potential benefits.

(29) List the alternative regulatory approaches which were considered and reasons for rejecting these alternatives.

No alternative schemes were considered, in light of the fact that regulations are specifically required by the Act.

Answer No. 11 sets forth a more detailed summary of the provisions of the Act calling for regulations.

(30) How will this regulation reduce or minimize paperwork, legal accounting, reporting or paperwork requirements?

Although the proposed regulation would dramatically increase the volume of paperwork handled by PDA, this paperwork is required in order for PDA to meet its duties under the Act.

Answer No. 14 describes some of the forms that will be generated under the proposed regulation.

(31) What provisions are included in the regulation to meet the special needs of affected groups or persons? If no such provisions are included, explain why.

The proposed regulations were 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 these proposed regulations. The proposed regulations embody many concepts

(31) Continued

supported by these groups. PDA also circulated a draft of this proposed regulation to approximately 150 interested person for a short comment period prior to commencing the promulgation process. PDA will consider all comments as the promulgation process proceeds.

(32) What plan has been developed to evaluate the effectiveness of the regulation after its implementation? What sunset date, if any, has been assigned?

The efficacy of the proposed regulations would be monitored on an ongoing basis, and regulatory revisions would be implemented as necessary.

No sunset date has been assigned.

PART IV: OTHER INFORMATION (Required by Sec. 5(a) of the Regulatory Review Act and Executive Order 1982-2.)

(33) Is there a deadline for action? Why? If there is no deadline, when should the regulation be adopted and what are the consequences of delay. (Attach copies of documents supporting the need for a deadline.)

PDA seeks to implement the proposed regulations at the earliest date practicable. The proposed regulations would also rescind and supplant the Interim Guidelines authorized under the Act (at 3 Pa.C.S. § 4112(d)) and published at 28 Pennsylvania Bulletin 2416 (May 23, 1998). Since the Act requires PDA inspect every commercial weighing and measuring device in the Commonwealth at intervals of no greater than 12 months, it is particularly urgent PDA obtain the regulatory mechanism by which to enlist other entities in the inspection effort.

(34) Is this regulation mandated by federal law or court order? Yes/No (Attach copies of orders, consent decrees, settlement memos, federal regulations, letter or agreement, etc.)

No.

(35) Upon what information is the need for this regulation based? What studies, hearings, or other research has been conducted?

The regulations are required by the Act. In addition, the Commonwealth's consumers and businesses will benefit from a program of regular inspections of commercial weighing or measuring devices.

(36) What steps, if any, were taken in the development of this regulation to provide public and legislative participation?

A detailed explanation of PDA's effort to involve affected persons in the development of the proposed regulations is set forth at Answer No. 31. In summary, PDA consulted representatives of industry, marketing organizations, consumers, State and county weights and measures officials and any other person that expressed interest in this regulatory project. Two drafts of proposed regulations were produced and comments were encouraged on each draft.

(37) Will current litigation be affected by this regulation? Yes/No If so cite cases and explain.

No.

FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to
form and legality. Attorney General


DEPUTY ATTORNEY GENERAL

SEP 2 1998

DATE OF APPROVAL

Check if applicable
if not approved. Objections
checked.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

Department of Agriculture

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-111

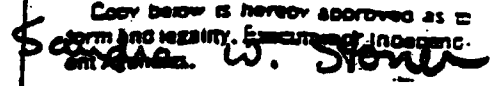
DATE OF ADOPTION: 06/8/98



SAMUEL E. HAYES, JR.

TITLE: Secretary of Agriculture

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive Director, Independence
Commission. 

BY: _____

9/10/98
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independence Commission)
(Sign in applicable box)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
70 Pa. Code Chapters 1-10, 21, 35 and 39
Weights, Measures and Standards

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 the Consolidated Weights and Measures Act ("Act")(3 Pa.C.S. §§ 4101-4194).

This regulatory objective will be accomplished by **deleting** Chapters 1 (relating to solid fuel), 3 (relating to commodities other than solid fuel) 35 (relating to inspection before use of weighing or measuring devices) and 39 (relating to interim guidelines for the certification of inspectors of commercially used universal product code scanning systems and price look up devices), **amending** Chapter 21 (relating to general provisions) and **adding** Chapters 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). The changes described in this paragraph are set forth in Annex "A", which follows this preamble.

Authority

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

- (1) General authority to regulate as necessary for the performance of its responsibilities under the Act (3 Pa.C.S. §§ 4110 and 4190);
- (2) Authority to require, through regulation, the registration of sellers, installers, servicers and repairers of commercially-used weighing and measuring devices (3 Pa.C.S. § 4113);
- (3) Authority to require, through regulation, the registration and reporting of testing of commercially-used weighing and measuring devices (3 Pa.C.S. § 4114);
- (4) The duty to establish, by regulation, minimum training standards for State inspectors and county and city sealers of weights and measures (3 Pa.C.S. § 4115);
- (5) Authority to regulate the method of sale of commodities in the Commonwealth (3 Pa.C.S. § 4127(c));
- (6) The duty to establish, by regulation, reasonable variations in weight, measure or count with respect to commodities (3 Pa.C.S. § 4128(b));
- (7) General authority to regulate with respect to public weighmasters (3 Pa.C.S. §§ 4150 and 4167);

(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 the Commonwealth (3 Pa.C.S. §§ 4170 and 4176)); and

(9) Authority to regulate with respect to domestic fuel oil (3 Pa.C.S. § 4183(b).

Need for the Regulations

There is an immediate need for the proposed regulations. The Act assigns the Department primary responsibility for conducting annual inspections of every commercially-used weighing or measuring device in the Commonwealth. It also allows some of this inspection responsibility to be assumed by county sealers or city sealers (if working pursuant to 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 regulations would establish minimum training and certification requirements for persons conducting inspections under authority of the Act.

A number of the provisions of the proposed regulations are specifically required by the Act itself. These provisions are described above, under the "Authority" heading.

There is also a consumer protection aspect to the proposed regulations. Implementation of the proposed regulations should ultimately make the weighing or measuring devices in commercial use in the Commonwealth more reliable, and help ensure 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 has need of the proposed regulation in that it should ultimately help lessen underpricing or underweighing of products and the monetary losses associated with such underpricing or underweighing.

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

Summary of the Proposed Regulation

The proposed regulation is 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 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 the Act at 3 Pa.C.S. § 4112(b)), 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, respectively) 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 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 summary, 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 all such systems and devices in commercial use in the 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 would **supplant** the current "Interim Guidelines for the Certification of Inspectors of Commercially Used Universal Product Code Scanning Systems and Price Look Up Devices", which are authorized under the Act (at 3 Pa.C.S. § 4112(d) and which were published at 28 Pennsylvania Bulletin 2416 (May 23, 1998).

Proposed Chapter 6 would establish a formal procedure pursuant to 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 is required by the Act (at 3 Pa.C.S. § 4114). In summary, owners of commercially-used weighing or measuring devices would have to register their devices with the Department. A person who inspected such a device would be required to file an inspection report form with the Department.

Proposed Chapter 8 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 deals with weighmasters, and sets forth a number of provisions relating to solid fuel. In summary, this chapter combines requirements imposed under the Act (at 3 Pa.C.S. §§ 4150-4168) with the relevant provisions of the former regulations on this subject. These former regulations appeared at 70 Pa. Code Chapters 1 and 3, and would be supplanted by the proposed regulation.

Proposed Chapter 10 contains provisions to establish a procedure pursuant to 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 and/or NIST 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 such a certificate has been issued.

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

Persons Likely to be Affected

The proposed regulations would affect a large number of persons and businesses.

Any business that makes commercial use of a weighing or measuring device in the Commonwealth would be affected by these regulations. 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 regulations would also affect any person who seeks the Department's certification as either a CEWM or a Certified UPC/PLU Inspector. Once certified, such a person could offer his or her services for a fee.

The proposed regulations will affect consumers throughout the Commonwealth. The proposed regulations 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 regulations should result in greater accuracy and fewer errors with respect to merchandise pricing.

Fiscal Impact

Commonwealth

The proposed regulations 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 regulations, PDA 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 regulations would not impose appreciable costs upon political subdivisions. Although a county or city that agrees to perform required inspections pursuant to 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 regulations 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 proposed regulations would require.

The proposed regulation would 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, 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.

General Public

The proposed regulations would impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed regulations would 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 regulations to the Independent Regulatory Review Commission 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. Section 745.5(a)). The Department also provided the Commission 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 the Commission has an objection to any portion of the proposed regulation, it must so notify the Department within 30 days after the close of the public comment 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 regulation.

Public Comment Period

The public comment period with respect to the proposed regulations shall be 30 days from the date of publication of these proposed regulations 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. Telephone: 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 regulations would have no sunset date, their efficacy would be reviewed on an ongoing basis.

Effective Date

The proposed regulations would take effect on the date of final adoption.

SAMUEL E. HAYES, JR.,
Secretary

ANNEX "A"

Title 70. WEIGHTS, MEASURES AND STANDARDS

PART I. [Weighmasters] **General**

- Chapter 1. [Solid Fuel] **[Reserved]**
- Chapter 2. General Provisions
- Chapter 3. [Commodities other than Solid Fuel] **[Reserved]**
- Chapter 4. Certified Examiners of Weights and Measures
- Chapter 5. UPC Scanning Systems and PLU Devices
- Chapter 6. Registration of Sellers, Installers and Repairers of Weighing and Measuring Devices
- Chapter 7. Registration and Report of Inspection of Commercial Weighing and Measuring Devices
- Chapter 8. Training Program for Inspectors and Sealers
- Chapter 9. Weighmasters
- Chapter 10. Device Type Approval

CHAPTER 1. [Solid Fuel] [Reserved]

CHAPTER 2. GENERAL PROVISIONS.

- | <u>Sec.</u> | <u>Title</u> |
|-------------|----------------------------|
| 2.1. | Definitions. |
| 2.2. | Contacting the Department. |

CHAPTER 3. [Commodities other than Solid Fuel] [Reserved]

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

- | <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 4.1. | Purpose. |
| 4.2. | Certified examiner of weights and measures. |
| 4.3. | Authority of a CEWM. |
| 4.4. | Categories and types of weighing or measuring devices. |
| 4.5. | Certification standards. |
| 4.6. | Training courses. |
| 4.7. | Audit by Department. |
| 4.8. | Applying for certification. |
| 4.9. | Certificate. |
| 4.10. | Expiration of certificate. |
| 4.11. | Obtaining a new certificate. |
| 4.12. | Testing and inspection performance standards. |
| 4.13. | Reporting procedures for certified examiners of weights and measures. |
| 4.14. | Inspection and testing by the Department. |
| 4.15. | Suspension or revocation of certification. |

- 4.16. CEWM list.
- 4.17. Civil penalties.

CHAPTER 5. UPC SCANNING SYSTEMS AND PLU DEVICES

- | <u>Sec.</u> | <u>Title</u> |
|-------------|--|
| 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. |
| 5.17. | Private certification programs: Registration. |
| 5.18. | Private certification programs: Requirements and fees. |
| 5.19. | Private certification program list. |

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

- | <u>Sec.</u> | <u>Title</u> |
|-------------|--|
| 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. |

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

- | <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 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. |

CHAPTER 8. TRAINING PROGRAM FOR INSPECTORS AND SEALERS

| <u>Sec.</u> | <u>Title</u> |
|-------------|--|
| 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. |

CHAPTER 9. WEIGHMASTERS

| <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 9.1. | Purpose. |
| 9.2. | Definitions. |
| 9.3. | License required. |
| 9.4. | Qualifications. |
| 9.5. | Application for a public weighmaster's license. |
| 9.6. | Term of license; subsequent licenses. |
| 9.7. | Format of a public weighmaster's license. |
| 9.8. | Display of license required. |
| 9.9. | Commodities sold by weight. |
| 9.10. | Weighmaster's certificate. |
| 9.11. | Issuing a public weighmaster's certificate. |
| 9.12. | Retention and inspection of certificates. |
| 9.13. | Solid fuel: Weighmaster's certificate required. |
| 9.14. | Solid fuel: Sales by employer-producer to employees. |
| 9.15. | Solid fuel: Certificate affecting weighing |
| 9.16. | Solid fuel: Limitations of certificate for anthracite. |
| 9.17. | Solid fuel: Responsibilities of weighmasters and shippers. |
| 9.18. | Solid fuel: Certificate of special transportation. |
| 9.19. | Solid fuel: Issuance of weighmaster certificates with respect to mine track scales and tipple scales. |
| 9.20. | Solid fuel: Reweighing and issuance of certificates. |
| 9.21. | Solid fuel: Reciprocity with New York. |

CHAPTER 10. DEVICE TYPE APPROVAL

| <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 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. |

CHAPTER 1. [Solid Fuel] [Reserved]

CHAPTER 2. GENERAL PROVISIONS.

- | <u>Sec.</u> | <u>Title</u> |
|-------------|----------------------------|
| 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 Certificate - A document issued by the Department to a particular person to evidence that the named individual is a Certified Examiner of Weights and Measures.

Certified Examiner of Weights and Measures or CEWM - 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 set forth in this chapter.

Certified UPC/PLU Inspector - An individual who is certified by the Department as meeting the training and application requirements of Chapter 5 and who is lawfully qualified to inspect UPC scanning systems and PLU devices for purposes of the testing and inspections required under the Act, at 3 Pa.C.S. § 4112(c).

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, however, of any 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 the Commercial Feed Act (3 Pa.C.S. §§ 5101-5115).

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

Department - The Department of Agriculture of the Commonwealth of Pennsylvania.

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 - The Act of July 7, 1994 (P.L. 421, No. 70)(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 - Any and all commerce or trade that is begun, carried on and/or completed wholly within the limits of this Commonwealth.

Introduced into interstate commerce - The time and place at which the first sale and/or delivery 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 3 Pa.C.S. § 4151 and Chapter 8 of this Title, 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 the Act (at 3 Pa.C.S. § 4121(a)) and this chapter, and that is otherwise in conformance with the requirements of 3 Pa.C.S. § 4125.

NCWM - The National Conference on Weights and Measures.

NIST - The National Institute of Standards and Technology.

Nonconsumer package or package of nonconsumer commodity - Any 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.

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

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

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

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

Private certification program - A program pursuant to 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 the Act (at 3 Pa.C.S. § 4112(c)) 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 set forth in § 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 price look-up 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 to be 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 3 Pa.C.S. § 4106.

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.

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 the Act, at 3 Pa.C.S. § 4112(C).

Universal product code or UPC - 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 - All 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. The term shall include, but not be limited to, 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. The term shall also include Price Look Up (PLU) Devices and Universal Product Code (UPC) Scanning Systems in food establishments required to be licensed in accordance with the Food Act. The term shall not be construed to 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. Such 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 shall be construed to 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. [Commodities other than Solid Fuel] [Reserved]

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

Sec. Title

4.1. Purpose.

4.2. Certified examiner of weights and measures.

- 4.3. Authority of a CEWM.
- 4.4. Categories and types of weighing or measuring devices.
- 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 certified examiners of weights and measures.
- 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 3 Pa.C.S. § 4110(a)(4), pursuant to which the Department may approve training courses and certify persons as "Certified Examiners of Weights and Measures" for purposes of the Act.

§ 4.2. Certified Examiner of Weights and Measures.

A person may apply to the Department for certification that the person is a Certified Examiner of Weights and Measures (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 set forth in § 4.4 (relating to categories and types of weighing and 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 3 Pa.C.S. § 4112(b), 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 must 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 forth at 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:

| <u>Course Number/ Title</u> | <u>Category/Type</u> |
|--|---|
| 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

(c) Changes to list. The Department will update or revise the list of approved NIST courses set forth at 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 set forth at § 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 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 at § 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 set forth at § 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 one-inch square color photographs (front facial view) of the person seeking a certificate.

(7) The date of the application.

(8) Such other information as 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) Such other information as the Department might reasonably include.

(c) Ownership of CEWM certificate. A CEWM certificate issued by the Department shall 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 his 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.

§ 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 must, instead,

apply for and obtain a new CEWM certificate in accordance with § 4.8 (relating to applying for certification) in order 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 he is or has been a CEWM must 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 hereby adopts applicable NIST standards as its testing and inspection performance standards.

§ 4.13. Reporting procedures for certified examiners of weights and measures.

(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 modern 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.

§ 4.14. Inspection and testing by the Department.

(a) **Random inspection and testing.** In accordance with 3 Pa.C.S. § 4110, 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 requirements of 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 effecting 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 any provision of this chapter.
- (2) Violates any 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 any 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

| Sec. | Title |
|-------------|---|
| 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.
- 5.17. Private certification programs: Registration.
- 5.18. Private certification programs: Requirements and fees.
- 5.19. Private certification program list.

§ 5.1. Purpose.

The Act requires (at 3 Pa.C.S. § 4112(c)) 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 the Interim Guidelines authorized at 3 Pa.C.S. § 4112(d) and published at 28 Pa. Bulletin 2416 (May 23, 1998).
- (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 can apply to the Department to become a Certified UPC/PLU Inspector.
- (4) Prescribe a procedure pursuant to 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 the Act at 3 Pa.C.S. § 4112(c).
- (6) Otherwise comply with the requirements of the Consolidated Weights and Measures Act at 3 Pa.C.S. § 4112(d).

§ 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 3 Pa.C.S. § 4125.

(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 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) 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 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" set forth 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 19. The Department will provide a copy of NCWM Publication 19 (August 1995), or any subsequent amendment thereof, at cost to any person requesting a copy.

§ 5.4. Certified UPC/PLU Inspector.

A person must be a Certified PLU/UPC Inspector to conduct an inspection of a commercially used UPC scanning system or PLU device described in the Act at 3 Pa.C.S. § 4112(c), 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 the Act, at 3 Pa.C.S. § 4112(c).

(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 the Act, at 3 Pa.C.S. § 4125; or

(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 must do the following:

(1) Successfully complete a training course in examination procedures for price verification as adopted by NIST/NCWM, and as described at § 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 the "Interim Guidelines" authorized by § 4112(d) of the Act and published at 28 Pa. Bulletin 2416 (May 23, 1998) 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 set forth at 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 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 set forth at § 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 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 one-inch square color photographs (front facial view) of the person seeking a certificate.
- (6) The date of the application.
- (7) Such other information as 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 shall 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 the Act, at 3 Pa.C.S. § 4112.

(6) Such other information as the Department might reasonably include.

(c) Ownership of UPC/PLU Inspector's Certificate. A certificate issued by the Department shall 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.

§ 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 must, 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 must have successfully completed an approved training course as described at § 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 his 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 at 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 ("Fax") machine. If delivery is accomplished by Fax 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" set forth 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 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 his 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) Name and address.
- (2) Telephone number.
- (3) Fax 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.

§ 5.17. Private certification programs: 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 the Act at 3 Pa.C.S. § 4112(c) by having the inspection performed by a private certification program. A private certification program must 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 set forth at § 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 above, 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.

§ 5.18. 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.

§ 5.19. Private certification 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 Fax 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. | Title |
|-------------|--|
| 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 the Act at 3 Pa.C.S. § 4113, pursuant to 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) shall not be applicable in instances where 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 such 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 shall 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 such system or device.

(b) Registration form. A person seeking to register with the Department under this subchapter may obtain a registration form from the Department at the address set forth at § 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 one-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) Such other information as 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 subchapter 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), shall be 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 3 Pa.C.S. § 4113.

(8) Such other information as the Department might reasonably include.

(c) Ownership of registration card. A registration card issued by the Department shall 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 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 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.

(2) County sealers and city sealers. If the Department has delegated this inspection responsibility to a county sealer or city sealer, it shall 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 no later than 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.**

| <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 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 at 3 Pa.C.S. § 4114, 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 3 Pa.C.S. § 4112.

§ 7.2. Weighing and measuring devices affected.

The requirements of this chapter are applicable to the following:

- (1) All 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) All 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) All 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) All commercially used UPC scanning systems and PLU devices.

§ 7.3. Requirement: Registration of devices by owners.

(a) **Owners must 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 set forth at § 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 the Liquid Fuels Tax Act (35 P.S. § 655.1 *et seq.*), 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 at § 7.2(1) or (2), in accordance with 3 Pa.C.S. § 4112(a) and pursuant to 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 such 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 3 Pa.C.S. § 4112(b) 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 3 Pa.C.S. § 4112(c) shall report the inspection to the Department in the manner set forth at § 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 such 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 at subsection (b) appears in a legible and understandable fashion on the document.

(b) **Required information.** A weighing or measuring device registration form shall require the following information:

- (1) The name and address of the person registering the device.
- (2) The location of the device.
- (3) The manufacturer's name or brand name.

- (4) The model number listed on the device.
- (5) The capacity of the device (if applicable).
- (6) The serial number of the device.
- (7) The category or type of weighing or measuring device to which the newly-installed device belongs.

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 paragraphs (1) and (2), and provide a general description of the various components of the system or device rather than the information required under paragraphs (3) - (7).

(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 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 3 Pa.C.S. § 5103.

(d) **Action by Department.** The Department will review each registration form it receives under this subchapter 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) **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

| <u>Sec.</u> | <u>Title</u> |
|-------------|--|
| 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, in accordance with 3 Pa.C.S. § 4115.

§ 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 with respect to individual types of weighing and measuring devices.

An inspector or sealer must 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 and/or certification 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, as a prerequisite to inspecting UPC scanning systems or PLU devices for purposes of the Act.

(2) **Types of weights and measures listed 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), as a prerequisite to inspecting or testing any of the categories and types of weighing and measuring devices listed at § 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 paragraphs (1) or (2), a State inspector, county sealer or city sealer must 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 the effective date 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

- | <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 9.1. | Purpose. |
| 9.2. | Definitions. |
| 9.3. | License required. |
| 9.4. | Qualifications. |
| 9.5. | Application for a public weighmaster's license. |
| 9.6. | Term of license; subsequent licenses. |
| 9.7. | Format of a public weighmaster's license. |
| 9.8. | Display of license required. |
| 9.9. | Commodities sold by weight. |
| 9.10. | Weighmaster's certificate. |
| 9.11. | Issuing a public weighmaster's certificate. |
| 9.12. | Retention and inspection of certificates. |
| 9.13. | Solid fuel: Weighmaster's certificate required. |
| 9.14. | Solid fuel: Sales by employer-producer to employees. |
| 9.15. | Solid fuel: Certificate affecting weighing |
| 9.16. | Solid fuel: Limitations of certificate for anthracite. |
| 9.17. | Solid fuel: Responsibilities of weighmasters and shippers. |
| 9.18. | Solid fuel: Certificate of special transportation. |
| 9.19. | Solid fuel: Issuance of weighmaster certificates with respect to mine track scales and tipple scales. |
| 9.20. | Solid fuel: Reweighing and issuance of certificates. |
| 9.21. | Solid fuel: 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 (3 Pa.C.S. §§ 4150-4169) of the Act.

§ 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 3 Pa.C.S. § 4151, 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 shall 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 or herself 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 he holds a valid license as a licensed public weighmaster.

§ 9.4. Qualifications.

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

- (1) The prospective applicant must be at least 18 years of age as of the date of application.
- (2) The prospective applicant must own or have use of a type of weighing device approved by the Bureau in accordance with 3 Pa.C.S. §§ 4170-4179 and with Chapter 10 of this Title (relating to device type approval) and approved by a weights and measures officer of this 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 set forth 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 scale or 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 of this Title (relating to device type approval) and approved by a weights and measures officer of this 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 set forth at § 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 shall 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 scale or scales to be used by the applicant and such other information as 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 shall be 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. In order 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 in order 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 scale or scales where the licensed public weighmaster conducts public weighing.

(5) The date the license was issued.

(6) The date the license will expire.

(7) Such other information as 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 3 Pa.C.S. §§ 4170-4179 and Chapter 10 of this Title (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 3 Pa.C.S. §§ 4170-4179 and Chapter 10 of this Title (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 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 shall not enter any weight value on a weighmaster's certificate unless he has personally determined that weight, and shall 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, 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. The foregoing 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 shall be responsible to retain a copy of each weighmaster's certificate he issues for a period of 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.

§ 9.13. Solid fuel: Weighmaster's certificate required.

(a) Rule for lots exceeding 100 pounds. A person shall 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 without each lot in each separate compartment of the vehicle or vehicle and trailer being accompanied by a weighmaster's certificate.

(b) Exceptions. The rule set forth 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 shall 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 without each lot in each separate compartment of the vehicle or vehicle and trailer being 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.

§ 9.14. Solid fuel: 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 3 Pa.C.S. § 4168.
- (5) The signature of the producer-employer or its agent.

(d) Record retention. A copy of any certificate of origin issued under 3 Pa.C.S. § 4168 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.

§ 9.15. Solid fuel: 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 shall be 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 set forth at § 2.2 (relating to contacting the department).

§ 9.16. Solid fuel: Limitations of certificate for anthracite.

(a) **Certificate of quality required.** In the case of anthracite, except barley and the smaller sizes, being transported under § 9.15 (relating to solid fuel: certificate affecting weighing requirements), no weighmaster may 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 unless and 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.

§ 9.17. **Solid fuel: Responsibilities of weighmasters and shippers.**

(a) **Weighmasters.** Weighmasters shall be held responsible and their licenses shall 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 §§ 9.13 - 9.17 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, shall be revoked.

§ 9.18. Solid fuel: 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 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 a period of 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 a period of 90 days.

§ 9.19. Solid fuel: 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 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.

§ 9.20. Solid fuel: 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. However, a duplicate copy may be returned to the operator of 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.

§ 9.21. Solid fuel: 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 Commonwealth border line.

CHAPTER 10. DEVICE TYPE APPROVAL

Sec. Title

- 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 the Commonwealth, in accordance with 3 Pa.C.S. §§ 4170-4179.

§ 10.2. Prohibition with respect to unapproved devices.

A person will 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 3 Pa.C.S. §§ 4170-4179 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 set forth 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 set forth 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 set forth at § 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) Any 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) 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 3 Pa.C.S. § 4174.

(7) Such other information as the Department might reasonably require.

(c) **Submitting the application.** The applicant shall forward the completed application from to the address set forth at § 2.2 (relating to contacting the Department).

(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 shall 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 shall contain an explanation of the basis upon which the decision to disapprove was made, and shall otherwise meet the requirements of 3 Pa.C.S. § 4172.

(e) **Review of decision to disapprove a device type.** An applicant shall follow the procedure set forth at 3 Pa.C.S. § 4172 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 shall 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 3 Pa.C.S. § 4174.

(4) The date of issuance of the certificate.

(5) Any 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 the type meets the standards for device type approval set forth at 3 Pa.C.S. §§ 4170-4179 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 pursuant to 3 Pa.C.S. §§ 4170-4179 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 3 Pa.C.S. § 4174.

(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 the Act at 3 Pa.C.S. § 4174. 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 3 Pa.C.S. § 4174.

§ 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 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 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 3 Pa.C.S. § 4123 to enforce the provisions of the Act shall be 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

Chapter 23. Consumer Packages, Commodities and Containers

Chapter 25. Nonconsumer Items

Chapter 27. Exemptions and Variations

CHAPTER 21. GENERAL PROVISIONS

Sec. Title

21.1. Definitions.

21.2. Applicability.

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

21.11. Consumer and nonconsumer packages.

§ 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, however, 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 National Institute of Standards and Technology in its Handbook 130, and supplements thereto and revisions thereof, as the method of sale of commodities in the 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 shall not be applied, and the relevant provision of the Act or this title shall be applied.

* * *

PART III. INSPECTIONS AND DEVICES

Chapter 29. [Reserved]

Chapter 31. [Reserved]

Chapter 33. Automatic Temperature Compensators

Chapter 35. [Inspection before Use of Weighing or Measuring Devices]

[Reserved]

Chapter 37. Precious Metals

* * *

**Chapter 35. [Inspection before Use of Weighing and Measuring Devices]
[Reserved.]**

* * *

**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:

Evaluation of Results:

Report Acknowledgement

___ Sample- ___ Not on File= ___ Adjusted Sample

Name/Title _____

___ Errors+ ___ Adjusted Sample = ___ Error in %

Inspector _____

Time In: _____

Accuracy ___ % Ratio: ___ Overcharges ___ Undercharges

Time Out: _____

Reinspection will be made within 30 days.

Original white. Bureau copy

Inspector's copy

UNOFFICIAL ANNOTATED COPY

NOTICE OF PROPOSED RULEMAKING

**Department of Agriculture
Title 70 - Weights, Measures and Standards
70 Pa. Code Chapters 1-10, 21, 35 and 39
I.D. No. 2-111**

Explanation.

An annotated, unofficial copy of the proposed regulations of the Pennsylvania Department of Agriculture with respect to weights, measures and standards is attached.

Throughout the attached document are numbers highlighted in gray rectangles. These highlighted numbers direct the reader to the correspondingly-numbered comment or reference set forth below.

A section number enclosed by parentheses follows each comment or reference set forth below. This section number is a reference to the section of the proposed regulation with respect to which the comment applies.

This document is an **unofficial** copy, and is offered to familiarize interested persons with the basic provisions of the proposed regulations. The **official** proposed regulation is the document published in the Pennsylvania Bulletin. **If there is any difference between this unofficial copy and the proposed regulation as it is published in the Pennsylvania Bulletin, the published version shall be deemed to be the accurate version.**

Comments and References.

1. This term appears at 3 Pa.C.S. § 4102. (§ 2.1)
2. This subsection affords State inspectors, county sealers and city sealers adequate time within which to complete this basic course. (§ 8.2(b))
3. This term appears at 3 Pa.C.S. §§ 4107 and 4113. The definition was provided by the Director, and is the definition of the term "working standards" from the NIST handbook for State Weights and Measures laboratories.

A commentator noted that NIST was referring to working "laboratory" standards, rather than "field" standards. (§ 3.1)

4. This term appears at 3 Pa.C.S. § 4114. (§ 2.1)
5. This term appears at 3 Pa.C.S. §§ 4151 and 4157. (§ 2.1)

6. This memorandum of understanding is referenced at 3 Pa. C.S. §§ 4121(b), 4122(b) and 4125(a). (§ 2.1)
7. This term appears at 3 Pa.C.S. § 4112(c). (§ 2.1)
8. This term appears at 3 Pa.C.S. § 4110. (§ 2.1)
9. This term appears at 3 Pa.C.S. § 4107. (§ 2.1)
10. This definition comes from the Statutory Construction Act, at 1 Pa.C.S. § 1991. (§ 2.1)
11. This comes from NIST Handbook #130, Page 148, § 2.13. See also 3 Pa.C.S. § 4112(c). (§ 2.1)
12. This definition was provided by the Regulation Writing Team. See also 3 Pa.C.S. § 4112(c). (§ 2.1)
13. This definition was provided by the Regulation Writing Group. (§ 2.1)
14. This term is described at 3 Pa.C.S. § 4112(a)(2). (§ 2.1)
15. This term ("Certified Examiner of Weights and Measures") appears at 3 Pa.C.S. §§ 4110 and 4112(b). It is repeated at § 4.4, and used throughout the regulation. (4.3(a))
16. These eight listed categories and types are set forth at 3 Pa.C.S. § 4112(b). (§ 4.4)
17. The Regulation Writing Group recommended an ID card sized certificate in its report, at § 4.3. (§ 4.9(a))
18. The Regulation Writing Group recommended this 3-year period with respect to Certified UPC/PLU Inspectors in § 4.3 of its report. This 3-year period will be applicable to CEWMs and Certified UPC/PLU Inspectors. (§ 4.9(b)(3))
19. Recommended by the Regulation Writing Group. (§ 4.9(b)(5))
20. This would entail taking the entire NIST course over. (§ 4.10(b)(1))
21. This would afford persons who have already successfully completed the appropriate NIST course the option to either repeat the course or take a shorter, Department-developed course in order to obtain certification with respect to a category or type with respect to which he has previously been certified. (§ 4.10(b)(2))
22. The adoption of testing and inspection performance standards is required at 3 Pa.C.S. § 4110(a)(4). (§ 4.12)

23. The reporting of inspections is a required component of this regulation, under 3 Pa.C.S. §§ 4110(a)(4) and 4114. (§ 4.13)
24. This is required at 3 Pa.C.S. § 4110. (§ 4.14)
25. This restates authority to inspect on something other than a "random" basis. (§ 4.14(b))
26. The Price Verification Regulation Writing Group suggested the Department be required to publish this list twice each year. As a compromise, the Department will assemble the list and provide it to any entity requesting a copy. Note: The Department has taken an identical approach with respect to its lists of Certified UPC/PLU Inspectors and private certification programs. (§ 4.16(b))
27. The general thrust of this paragraph comes from § 2.1 of the Regulation Writing Group's report. See also 3 Pa.C.S. § 4110(b). The final phrase references the fact that this chapter supplants the Interim Guidelines. (§ 5.1)
28. This definition comes from the Interim Guidelines. (§ 2.1)
29. The original defined term was "scanner", but "scanning system" is more accurate. It was also used in the Interim Guidelines. (§ 2.1)
30. "State" Inspector was added for clarity in the Interim Guidelines, and is included here in the subsequent regulations. (§ 2.1)
31. See 3 Pa.C.S. § 4112(c) and (d). (§ 5.2)
32. See 3 Pa.C.S. §§ 4112(c) and 4110(b). Also see § 2.3 of the Regulation Writing Group's report. This language was also used in the Interim Guidelines. (§ 5.3)
33. This term replaces "certificate" in earlier drafts. It avoids confusion between this term and the "Certified UPC/PLU Inspectors" referenced in Chapter 5. (§ 2.1)
34. This subsection allows Certified UPC/PLU Inspectors who gained their certification under the Interim Guidelines to remain "certified" under these regulations. (§ 5.6(b))
35. This excludes **sellers** of weights and measures. The reference to NIST Handbook 44 is consistent with the Act, at 3 Pa.C.S. § 4110(b). (§ 6.3(a))
36. This chapter restates many provisions of the "Interim Guidelines" authorized at 3 Pa.C.S. § 4112(d). (§ 5.1)
37. This example was recommended by the Pennsylvania Retailers' Association, and restates the referenced paragraph of the "Examination Procedure for Price Verification"

developed by NIST. (§ 5.3(a))

38. The second sentence of this subsection clarifies that **any** qualified person may offer training, and that the trainer need not be an employee of the Department. This clarification was requested by the Pennsylvania Retailers' Association. (§ 5.7(b))

39. Several commentators requested a private certification program be permitted to submit an abbreviated inspection report to the Department. The Department did not implement this suggestion, since it seeks to maintain that inspections are being conducted in accordance with NIST's Examination Procedure for Price Verification. (§ 5.12(a))

40. This subsection allows persons who became Certified UPC/PLU Inspectors under the Interim Guidelines to remain Certified Inspectors **after** the regulations take effect and supplant those Interim Guidelines. (§ 5.6(b))

41. The Scanner Certification Program opposes for-profit inspections. The Department believes the Act does not impose this limitation. (§ 5.5(c))

42. This paragraph is new to this draft, and requires a CEWM have equipment that is adequate for the performance of accurate inspections. (§ 4.8(b)(5))

43. A commentator requested this be more specific, but the Department believes the NIST training required of a CEWM will address what might constitute a defect or deficiency. (§ 4.13(c)(7))

44. This paragraph was added in response to comments. (§§ 4.15(a)(3)-(4))

45. This paragraph was not included in the Interim Guidelines. It parallels § 4.15(a)(3), which relates to suspension or revocation of a CEWM certificate. (5.15(a)(3))

46. Same comment as comment No. 45, but this language parallels § 4.15(a)(4). (§ 5.15(a)(4))

47. This subsection is new. It exempts sellers, installers, servicers and repairers of UPC scanning systems and PLU devices from having to register with the Department. (§ 6.2(b))

48. The final phrase is new, and restates the exception set forth at § 6.2(b). (§ 6.4(a))

49. The second sentence was added to clarify the type of documentation required. (§ 6.3(b))

50. The format for this registration card is similar to that of a CEWM Certificate (see § 4.9(b)) or a UPC/PLU Inspector's Certificate (see § 5.9). (§ 6.5)

51. The weights and measures described in this section are all referenced in the Act, at 3 Pa.C.S. § 4112. (§ 7.2)
52. The Liquid Fuels Tax Act was recently amended such that the owner of a typical gas station is no longer required to have a liquid fuels tax permit. Although the Department is negotiating the required memorandum of understanding with the Department of Revenue to obtain information on the location of gas pumps Statewide, it appears the exemption referenced in the Act at 3 Pa.C.S. § 4114 will not decrease the Department's enforcement obligations. (§ 7.3(b))
53. The Act (at 3 Pa.C.S. § 4125(b)) requires annual reports or reports "at such other times as the Department may require". The Department currently requires monthly reports, and believes this reporting interval allows it to address small problems before they become big ones. (§ 7.4(a)(1)-(3))
54. This subsection formerly addressed only private certification programs, but is now applicable to all Certified UPC/PLU Inspectors. (§ 7.4(c))
55. This exception is new, and attempts to address the fact a UPC scanning system or PLU device may be comprised of a variety of physically separated component parts, and that these parts are frequently replaced. (§ 7.5(b)(4))
56. This is required under the Act, at 3 Pa.C.S. § 4115. (§ 8.2(a))
57. This section has been revised to separately address UPC scanning systems and PLU devices, specific types of weights and measures addressed in the Act at 3 Pa.C.S. § 4112(b), other types of weights and measures. (§ 8.3)
58. This term is defined at 70 Pa. Code § 1.1. (§ 9.2)
59. See 3 Pa.C.S. § 4157(b). (§ 9.2)
60. This essentially restates the Act, at 3 Pa.C.S. §§ 4151(a) and 4157(a). (§ 9.3)
61. This is referenced in the Act, at 3 Pa.C.S. § 4151(g), and essentially rephrases the regulation at 70 Pa. Code § 3.12. (§ 9.4)
62. This tracks with the Act, at 3 Pa.C.S. § 4154. (§§ 9.4(b), 9.5(b)(4) and 9.11(b))
63. Paragraphs (1)-(3) are prescribed by the Act, at 3 Pa.C.S. § 4151(a). (§ 9.5(b)(1)-(3))
64. This fee is set by the Act, at 3 Pa.C.S. § 4151(c). (§ 9.5(c))
65. The subject of referral is addressed in the Act at 3 Pa.C.S. § 4151(b). (§ 9.5(e)(3))

66. This term is required by the Act, at 3 Pa.C.S. § 4151(c). (§ 9.6(a))
67. See the Act, at 3 Pa.C.S. § 4151(d). (§§ 9.6(c) and 9.8)
68. This language is derived from the Act, at 3 Pa.C.S. § 4155. (§ 9.9)
69. This is prescribed by the Act, at 3 Pa.C.S. § 4152. (§§ 9.10 and 9.11(d))
70. See the regulation at 70 Pa. Code § 3.13. (§ 9.10(b))
71. See the Act, at 3 Pa.C.S. §§ 4152(7) and 4153. (§ 9.11(e))
72. See the Act, at 3 Pa.C.S. § 4153. (§ 9.11(f))
73. See the regulation at 70 Pa. Code § 1.32. (§ 9.11(g))
74. See the Act, at 3 Pa.C.S. § 4156. (§ 9.11(h))
75. See the Act, at 3 Pa.C.S. § 4156, and the regulation at 70 Pa. Code § 3.14. (§ 9.12)
76. See the Act, at 3 Pa.C.S. § 4173. (§ 10.2)
77. See the Act, at 3 Pa.C.S. § 4170. (§§ 10.3 and 10.5(a))
78. The reference to submitting a device or set of specifications to the Department for review is set forth in the Act, at 3 Pa.C.S. § 4171. As long as there exists a NIST/NCWM Certificate of Conformance with respect to a device type, though, it would not be necessary for a device or set of specifications to be submitted. (§ 10.6(b)(5))
79. See the Act, at 3 Pa.C.S. § 4172. (§ 10.7)
80. This is required by the Act, at 3 Pa.C.S. § 4176. (§ 10.9)
81. See the Act, at 3 Pa.C.S. § 4111(b). (§ 10.9(a))
82. This is required by the Act, at 3 Pa.C.S. § 4178. (§§ 10.10, 10.0(b))
83. This new subsection was added in order to address the fact that the various components of a UPC scanning system or PLU device may be physically separated, and these components may be replaced on a frequent basis. The Act (at 3 Pa.C.S. § 4174) does not allow the Department to make a blanket waiver of this marking requirement but requires, instead, that the manufacture formally apply for the exemption. (§ 10.8(b))
84. This section has been reformatted, and now requires more detailed information - such as manufacturer's name, model number and capacity. (§ 6.6)

85. The information required on the registration form has been revised and is now similar, in most respects, to the information required with respect to newly-installed devices at § 6.6. (§ 7.5(b))
86. The Pennsylvania Association of Weights and Measures recommended the form require this information. (§ 4.13(c)(6))
87. See the Act, at 3 Pa.C.S. § 4164. (§ 9.13(a))
88. See the Act, at 3 Pa.C.S. § 4165. (§ 9.13(a))
89. See the Act, at 3 Pa.C.S. § 4164(a). (§ 9.13(b)(1))
90. See the Act, at 3 Pa.C.S. § 4164(b). (§ 9.13(b)(2))
91. See the Act, at 3 Pa.C.S. § 4166. (§ 9.13(b)(3))
92. See the Act, at 3 Pa.C.S. § 4165. (§ 9.13(c))
93. See the Act, at 3 Pa.C.S. § 4168. (§ 9.14)
94. Formerly 70 Pa. Code § 1.11. (§ 9.15)
95. Formerly 70 Pa. Code § 1.12. (§ 9.16)
96. Formerly 70 Pa. Code § 1.13. (§ 9.17)
97. Formerly 70 Pa. Code § 1.21. (§ 9.18)
98. Formerly 70 Pa. Code § 1.31. Subsection (b) of that section was deleted. (§ 9.19)
99. Formerly 70 Pa. Code § 1.32. (§ 9.20)
100. Formerly 70 Pa. Code § 1.41. (§ 9.21)
101. This subsection essentially restates the requirement set forth in the Act at 3 Pa.C.S. § 4112(c). (§ 5.18(a))
102. [Reserved]
103. This subsection describes what are likely to be some of the more common fee arrangements for private certification programs. (§ 5.18(d))
104. The term "grain moisture meter" was added to this definition. The Department may withdraw this term as the regulation proceeds toward promulgation. (§ 2.1)

105. The underlined material is new. It revises current regulations to reflect definitions prescribed by the Act. (§ 21.1)
106. See the Act, at 3 Pa.C.S. § 4127(c). (§ 21.3)
107. The substance of this chapter is now found at § 6.6. (§§ 35.1-35.3)
108. See the Act, at 3 Pa.C.S. §§ 4119, 4126 and 4177. (§ 6.6(a))
109. This revises the current regulation at 70 Pa. Code § 35.5, which will be rescinded. (§ 6.6(d))
110. This revises the current regulations at 70 Pa. Code §§ 35.1 and 35.2, which will be rescinded. (§ 6.6(c))
111. This subsection was suggested in the context of the Office of General Counsel's review of the "Interim Guidelines" for Certified UPC/PLU Inspectors. (§ 5.3(c))

ANNEX "A"

Title 70. WEIGHTS, MEASURES AND STANDARDS

PART I. [Weighmasters] **General**

- Chapter 1. [Solid Fuel] **[Reserved]**
- Chapter 2. General Provisions
- Chapter 3. [Commodities other than Solid Fuel] **[Reserved]**
- Chapter 4. Certified Examiners of Weights and Measures
- Chapter 5. UPC Scanning Systems and PLU Devices
- Chapter 6. Registration of Sellers, Installers and Repairers of Weighing and Measuring Devices
- Chapter 7. Registration and Report of Inspection of Commercial Weighing and Measuring Devices
- Chapter 8. Training Program for Inspectors and Sealers
- Chapter 9. Weighmasters
- Chapter 10. Device Type Approval

CHAPTER 1. [Solid Fuel] **[Reserved]**

CHAPTER 2. GENERAL PROVISIONS.

- | <u>Sec.</u> | <u>Title</u> |
|-------------|----------------------------|
| 2.1. | Definitions. |
| 2.2. | Contacting the Department. |

CHAPTER 3. [Commodities other than Solid Fuel] **[Reserved]**

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

- | <u>Sec.</u> | <u>Title</u> |
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| 4.1. | Purpose. |
| 4.2. | Certified examiner of weights and measures. |
| 4.3. | Authority of a CEWM. |
| 4.4. | Categories and types of weighing or measuring devices. |
| 4.5. | Certification standards. |
| 4.6. | Training courses. |
| 4.7. | Audit by Department. |
| 4.8. | Applying for certification. |
| 4.9. | Certificate. |
| 4.10. | Expiration of certificate. |
| 4.11. | Obtaining a new certificate. |
| 4.12. | Testing and inspection performance standards. |
| 4.13. | Reporting procedures for certified examiners of weights and measures. |
| 4.14. | Inspection and testing by the Department. |
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- 4.16. CEWM list.
- 4.17. Civil penalties.

CHAPTER 5. UPC SCANNING SYSTEMS AND PLU DEVICES

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| 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. |
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| 5.9. | UPC/PLU Inspector's Certificate. |
| 5.10. | Expiration of UPC/PLU Inspector's Certificate. |
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| 5.12. | Inspections: Reporting procedures. |
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| 5.14. | Inspection and testing by the Department. |
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| 5.16. | Certified UPC/PLU Inspector list. |
| 5.17. | Private certification programs: Registration. |
| 5.18. | Private certification programs: Requirements and fees. |
| 5.19. | Private certification program list. |

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

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|-------------|--|
| 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. |

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

- | <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 7.1. | Purpose. |
| 7.2. | Weighing and measuring devices affected. |
| 7.3. | Requirement: Registration of devices by owners. |
| 7.4. | Report by inspectors. |
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CHAPTER 8. TRAINING PROGRAM FOR INSPECTORS AND SEALERS

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|-------------|--|
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| 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. |
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CHAPTER 9. WEIGHMASTERS

| Sec. | Title |
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| 9.18. | Solid fuel: Certificate of special transportation. |
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CHAPTER 10. DEVICE TYPE APPROVAL

| Sec. | Title |
|-------------|---|
| 10.1. | Purpose |
| 10.2. | Prohibition with respect to unapproved devices. |
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| 10.8. | Marking of approved devices. |
| 10.9. | Specifications, variations and tolerances with respect to device type approval. |
| 10.10. | Fees. |

CHAPTER 1. [Solid Fuel] [Reserved]

CHAPTER 2. GENERAL PROVISIONS.

- | <u>Sec.</u> | <u>Title</u> |
|-------------|----------------------------|
| 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 Certificate - A document issued by the Department to a particular person to evidence that the named individual is a Certified Examiner of Weights and Measures.

Certified Examiner of Weights and Measures or CEWM - 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 set forth in this chapter.

Certified UPC/PLU Inspector - An individual who is certified by the Department as meeting the training and application requirements of Chapter 5 and who is lawfully qualified to inspect UPC scanning systems and PLU devices for purposes of the testing and inspections required under the Act, at 3 Pa.C.S. § 4112(c).

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, however, of any 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 the Commercial Feed Act (3 Pa.C.S. §§ 5101-5115).

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

Department - The Department of Agriculture of the Commonwealth of Pennsylvania. ■

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 - The Act of July 7, 1994 (P.L. 421, No. 70)(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 - Any and all commerce or trade that is begun, carried on and/or completed wholly within the limits of this Commonwealth. ■

Introduced into interstate commerce - The time and place at which the first sale and/or delivery 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 3 Pa.C.S. § 4151 and Chapter 8 of this Title, 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 the Act (at 3 Pa.C.S. § 4121(a)) and this chapter, and that is otherwise in conformance with the requirements of 3 Pa.C.S. § 4125. ■

NCWM - The National Conference on Weights and Measures. ■

NIST - The National Institute of Standards and Technology. ■

Nonconsumer package or package of nonconsumer commodity - Any 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. ■

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

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

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

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

Private certification program - A program pursuant to 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 the Act (at 3 Pa.C.S. § 4112(c)) 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 set forth in § 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 price look-up 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 to be 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 3 Pa.C.S. § 4106.

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. ■

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 the Act, at 3 Pa.C.S. § 4112(C).

Universal product code or UPC - 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 - All 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. The term shall include, but not be limited to, 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. The term shall also include Price Look Up (PLU) Devices and Universal Product Code (UPC) Scanning Systems in food establishments required to be licensed in accordance with the Food Act. The term shall not be construed to 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. Such 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 shall be construed to 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. [Commodities other than Solid Fuel] [Reserved]

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

| Sec. | Title |
|-------------|---|
| 4.1. | Purpose. |
| 4.2. | Certified examiner of weights and measures. |
| 4.3. | Authority of a CEWM. |
| 4.4. | Categories and types of weighing or measuring devices. |
| 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 certified examiners of weights and measures. |
| 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 3 Pa.C.S. § 4110(a)(4), pursuant to which the Department may approve training courses and certify persons as "Certified Examiners of Weights and Measures" for purposes of the Act.

§ 4.2. Certified Examiner of Weights and Measures.

A person may apply to the Department for certification that the person is a Certified Examiner of Weights and Measures (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 set forth in § 4.4 (relating to categories and types of weighing and 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 3 Pa.C.S. § 4112(b), 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 must 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 forth at 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:

| <u>Course Number/ Title</u> | <u>Category/Type</u> |
|--|---|
| 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 set forth at 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 set forth at § 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 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 at § 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 set forth at § 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 one-inch square color photographs (front facial view) of the person seeking a certificate.

(7) The date of the application.

(8) Such other information as 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.

§ 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.

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(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) Such other information as the Department might reasonably include.

(c) Ownership of CEWM certificate. A CEWM certificate issued by the Department shall 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 his 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.

§ 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 must, instead, apply for and obtain a new CEWM certificate in accordance with § 4.8 (relating to applying for certification) in order 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 he is or has been a CEWM must 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 hereby adopts applicable NIST standards as its testing and inspection performance standards.

§ 4.13. Reporting procedures for certified examiners of weights and measures.

(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 three 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 3 Pa.C.S. § 4110, 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 requirements of 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 effecting 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 any provision of this chapter.

(2) Violates any 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 any 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

Sec. Title

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.
- 5.17. Private certification programs: Registration.
- 5.18. Private certification programs: Requirements and fees.
- 5.19. Private certification program list.

§ 5.1. Purpose. ■■■

The Act requires (at 3 Pa.C.S. § 4112(c)) 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 the Interim Guidelines authorized at 3 Pa.C.S. § 4112(d) and published at 28 Pa. Bulletin 2416 (May 23, 1998). ■■■
- (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 can apply to the Department to become a Certified UPC/PLU Inspector.
- (4) Prescribe a procedure pursuant to 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 the Act at 3 Pa.C.S. § 4112(c).
- (6) Otherwise comply with the requirements of the Consolidated Weights and Measures Act at 3 Pa.C.S. § 4112(d).

§ 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 3 Pa.C.S. § 4125.

(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 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) 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 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" set forth 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 19. The Department will provide a copy of NCWM Publication 19 (August 1995) for free or at cost to any person requesting a copy. ■■■■

§ 5.4. Certified UPC/PLU Inspector.

A person must be a Certified PLU/UPC Inspector to conduct an inspection of a commercially used UPC scanning system or PLU device described in the Act at 3 Pa.C.S.

§ 4112(c), 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 the Act, at 3 Pa.C.S. § 4112(c).

(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 the Act, at 3 Pa.C.S. § 4125; or

(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 must do the following:

(1) Successfully complete a training course in examination procedures for price verification as adopted by NIST/NCWM, and as described at § 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 the "Interim Guidelines" authorized by § 4112(d) of the Act and published at 28 Pa. Bulletin 2416 (May 23, 1998) 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 set forth at 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 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 set forth at § 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 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 one-inch square color photographs (front facial view) of the person seeking a certificate.
- (6) The date of the application.
- (7) Such other information as 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.

§ 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 the Act, at 3 Pa.C.S. § 4112.
- (6) Such other information as the Department might reasonably include.

(c) Ownership of UPC/PLU Inspector's Certificate. A certificate issued by the Department shall 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.

§ 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 must, 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 must have successfully completed an approved training course as described at § 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 his 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 at 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 ("Fax") machine. If delivery is accomplished by Fax 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" set forth 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 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 his 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) Name and address.
- (2) Telephone number.
- (3) Fax 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.

§ 5.17. Private certification programs: 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 the Act at 3 Pa.C.S. § 4112(c) by having the inspection performed by a private certification program. A private certification program must 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 set forth at § 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 above, 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 effecting the accuracy of a written statement it has filed with the Department, provide the Department an update of its written statement.

§ 5.18. 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. [REDACTED]

(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. [REDACTED]

§ 5.19. Private certification 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 Fax 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. Title

- 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 the Act at 3 Pa.C.S. § 4113, pursuant to 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) shall not be applicable in instances where 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 such 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. ■■■

(b) Adequate field standards. For purposes of this Chapter, field standards shall 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 such system or device.

(b) Registration form. A person seeking to register with the Department under this subchapter may obtain a registration form from the Department at the address set forth at § 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 one-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) Such other information as 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.

§ 6.5. Registration card.

(a) Form of registration card. The Department will provide a registrant under this subchapter 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), shall be 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 3 Pa.C.S. § 4113.
- (8) Such other information as the Department might reasonably include.

(c) Ownership of registration card. A registration card issued by the Department shall 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 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 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.

(2) County sealers and city sealers. If the Department has delegated this inspection responsibility to a county sealer or city sealer it shall 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 no later than 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.**

| <u>Sec.</u> | <u>Title</u> |
|-------------|---|
| 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 at 3 Pa.C.S. § 4114, 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 3 Pa.C.S. § 4112.

§ 7.2. Weighing and measuring devices affected.

The requirements of this chapter are applicable to the following:

(1) All 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) All 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) All 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) All commercially used UPC scanning systems and PLU devices.

§ 7.3. Requirement: Registration of devices by owners.

(a) **Owners must 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 set forth at § 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 the Liquid Fuels Tax Act (35 P.S. § 655.1 *et seq.*), 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 at § 7.2(1) or (2), in accordance with 3 Pa.C.S. § 4112(a) and pursuant to 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 such 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 3 Pa.C.S. § 4112(b) 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 3 Pa.C.S. § 4112(c) shall report the inspection to the Department in the manner set forth at § 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 such 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 at subsection (b) appears in a legible and understandable fashion on the document.

(b) Required information. A weighing or measuring device registration form shall require the following information:

- (1) The name and address of the person registering the device.
- (2) The location of the device.
- (3) The manufacturer's name or brand name.
- (4) The model number listed on the device.
- (5) The capacity of the device (if applicable).
- (6) The serial number of the device.
- (7) The category or type of weighing or measuring device to which the newly-installed device belongs.

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 paragraphs (1) and (2), and provide a general description of the various components of the system or device rather than the information required under paragraphs (3) - (7).

(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 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 3 Pa.C.S. § 5103.

(d) Action by Department. The Department will review each registration form it receives under this subchapter 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.

(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

| <u>Sec.</u> | <u>Title</u> |
|-------------|--------------|
|-------------|--------------|

| | |
|------|----------|
| 8.1. | Purpose. |
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| 8.2. | General adoption of NIST training program. |
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| 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, in accordance with 3 Pa.C.S. § 4115.

§ 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 with respect to individual types of weighing and measuring devices.

An inspector or sealer must 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 and/or certification 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, as a prerequisite to inspecting UPC scanning systems or PLU devices for purposes of the Act.

(2) **Types of weights and measures listed 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), as a prerequisite to inspecting or testing any of the categories and types of weighing and measuring devices listed at § 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 paragraphs (1) or (2), a State inspector, county sealer or city sealer must 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 the effective date 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

Sec. Title

- 9.1. Purpose.
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- 9.3. License required.
- 9.4. Qualifications.
- 9.5. Application for a public weighmaster's license.
- 9.6. Term of license; subsequent licenses.
- 9.7. Format of a public weighmaster's license.
- 9.8. Display of license required.
- 9.9. Commodities sold by weight.
- 9.10. Weighmaster's certificate.
- 9.11. Issuing a public weighmaster's certificate.
- 9.12. Retention and inspection of certificates.
- 9.13. Solid fuel: Weighmaster's certificate required.
- 9.14. Solid fuel: Sales by employer-producer to employees.
- 9.15. Solid fuel: Certificate affecting weighing
- 9.16. Solid fuel: Limitations of certificate for anthracite.
- 9.17. Solid fuel: Responsibilities of weighmasters and shippers.
- 9.18. Solid fuel: Certificate of special transportation.
- 9.19. Solid fuel: Issuance of weighmaster certificates with respect to mine track scales and tipple scales.
- 9.20. Solid fuel: Reweighing and issuance of certificates.
- 9.21. Solid fuel: 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 (3 Pa.C.S. §§ 4150-4169) of the Act.

§ 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. [REDACTED]

Net weight - Gross weight less tare weight. [REDACTED]

Public weighing - The weighing of any commodity for any commercial purpose. [REDACTED]

Tare weight - The actual weight of only the vehicle. [REDACTED]

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 3 Pa.C.S. § 4151, 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. [REDACTED]

A person shall 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 or herself 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 he holds a valid license as a licensed public weighmaster.

§ 9.4. Qualifications. [REDACTED]

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

- (1) The prospective applicant must be at least 18 years of age as of the date of application.
- (2) The prospective applicant must own or have use of a type of weighing device approved by the Bureau in accordance with 3 Pa.C.S. §§ 4170-4179 and with Chapter 10 of this Title (relating to device type approval) and approved by a weights and measures officer of this Commonwealth for use as of the date of application. [REDACTED]

§ 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 set forth 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 scale or scales where weighing would be conducted by the licensed public weighmaster. [REDACTED]
- (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 of this Title (relating to device type approval) and approved by a weights and measures officer of this Commonwealth for use as of the date of application. [REDACTED]

(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 set forth at § 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.

(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 scale or scales to be used by the applicant and such other information as 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 shall be 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. In order 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 in order 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 scale or scales where the licensed public weighmaster conducts public weighing.

(5) The date the license was issued.

(6) The date the license will expire.

(7) Such other information as 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 3 Pa.C.S. §§ 4170-4179 and Chapter 10 of this Title (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 3 Pa.C.S. §§ 4170-4179 and Chapter 10 of this Title (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 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 shall not enter any weight value on a weighmaster's certificate unless he has personally determined that weight, and shall 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, 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. The foregoing 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 shall be responsible to retain a copy of each weighmaster's certificate he issues for a period of 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. ■■■

§ 9.13. Solid fuel: Weighmaster's certificate required.

(a) Rule for lots exceeding 100 pounds. A person shall 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 without each lot in each separate compartment of the vehicle or vehicle and trailer being accompanied by a weighmaster's certificate. ■■■

(b) Exceptions. The rule set forth in paragraph (a) shall not apply to solid fuel when either of the following occurs:

(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 shall 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 without each lot in each separate compartment of the vehicle or vehicle and trailer being accompanied by a weighmaster's certificate unless the solid fuel is in closed containers or closed bags and the net contents of the bag or container (expressed in avoirdupois pounds), the type of solid fuel and the name, address, city, state and zip code of the seller are plainly stamped or printed on the containers or bags or on a tag securely attached to the containers or bags. ■■■

§ 9.14. Solid fuel: 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 3 Pa.C.S. § 4168.
- (5) The signature of the producer-employer or its agent.

(d) **Record retention.** A copy of any certificate of origin issued under 3 Pa.C.S. § 4168 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. ■■■

§ 9.15. Solid fuel: 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 shall be 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 set forth at § 2.2 (relating to contacting the department).

§ 9.16. Solid fuel: Limitations of certificate for anthracite.

(a) **Certificate of quality required.** In the case of anthracite, except barley and the smaller sizes, being transported under § 9.15 (relating to solid fuel: certificate affecting weighing requirements), no weighmaster may 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 unless and 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.

§ 9.17. Solid fuel: Responsibilities of weighmasters and shippers. ■■■

(a) **Weighmasters.** Weighmasters shall be held responsible and their licenses shall 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 §§ 9.13 - 9.17 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, shall be revoked.

§ 9.18. Solid fuel: 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, typewriter 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 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 a period of 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 a period of 90 days.

§ 9.19. Solid fuel: 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.

§ 9.20. Solid fuel: 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. However, a duplicate copy may be returned to the operator of 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.

§ 9.21. Solid fuel: 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 Commonwealth border line.

CHAPTER 10. DEVICE TYPE APPROVAL

Sec. Title

- 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 the Commonwealth, in accordance with 3 Pa.C.S. §§ 4170-4179.

§ 10.2. Prohibition with respect to unapproved devices.

A person will 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 3 Pa.C.S. §§ 4170-4179 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 set forth 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 set forth 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 set forth at § 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) Any other documentation necessary to a reasoned determination by the Department as to whether the type meets the general standard set forth at § 10.2 (relating to general standard for approval by the Department). 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 3 Pa.C.S. § 4174.

(7) Such other information as the Department might reasonably require.

(c) Submitting the application. The applicant shall forward the completed application from to the address set forth at § 2.2 (relating to contacting the Department).

(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 shall 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 shall contain an explanation of the basis upon which the decision to disapprove was made, and shall otherwise meet the requirements of 3 Pa.C.S. § 4172.

(e) Review of decision to disapprove a device type. An applicant shall follow the procedure set forth at 3 Pa.C.S. § 4172 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 shall 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 3 Pa.C.S. § 4174.

(4) The date of issuance of the certificate.

(5) Any 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 the type meets the standards for device type approval set forth at 3 Pa.C.S. §§ 4170-4179 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 pursuant to 3 Pa.C.S. §§ 4170-4179 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 3 Pa.C.S. § 4174.

(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 the Act at 3 Pa.C.S. § 4174. 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 3 Pa.C.S. § 4174. ■■■

§ 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 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).

§ 10.10. Fees. ■■■

(a) Fees. The State Metrology Laboratory may charge an applicant a fee for conducting such 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 any additional equipment in accordance with 3 Pa.C.S. § 4123 to enforce the provisions of the Act shall be 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

Chapter 23. Consumer Packages, Commodities and Containers

Chapter 25. Nonconsumer Items

Chapter 27. Exemptions and Variations

CHAPTER 21. GENERAL PROVISIONS

Sec. Title

21.1. Definitions.

21.2. Applicability.

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

21.11. Consumer and nonconsumer packages.

§ 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, however, 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 National Institute of Standards and Technology in its Handbook 130, and supplements thereto and revisions thereof, as the method of sale of commodities in the 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 shall not be applied, and the relevant provision of the Act or this title shall be applied. ■■■

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PART III. INSPECTIONS AND DEVICES

Chapter 29. [Reserved]

Chapter 31. [Reserved]

Chapter 33. Automatic Temperature Compensators

Chapter 35. [Inspection before Use of Weighing or Measuring Devices]
[Reserved] ■■■

Chapter 37. Precious Metals

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**Chapter 35. [Inspection before Use of Weighing and Measuring Devices]
[Reserved.]** ■■■

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
LEGAL OFFICE

September 29, 1998

The Independent Regulatory Review Commission
14th Floor
333 Market Street
Harristown #2
Harrisburg, PA 17120

Re: PROPOSED RULEMAKING
Department of Agriculture
Bureau of Ride and Measurement Standards
70 Pa. Code Chapters 1-10, 21, 35 and 39
Weights, Measures and Standards
I.D. No. 2-111

Dear Sirs:

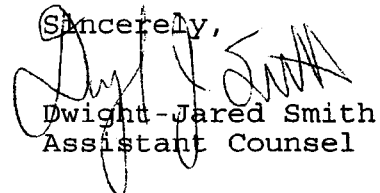
Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

I have also enclosed an unofficial annotated copy of the proposed regulation. Although there are slight differences between this document and the proposed regulation, the annotations contains references and explanations with respect to most of the substantive revisions contained in the proposed regulation. This should assist the Regulatory Analyst assigned to review this proposed regulation.

If I may be of further information, please advise.

Sincerely,



Dwight-Jared Smith
Assistant Counsel

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-111
 SUBJECT: Weights, Measures & Standards
 AGENCY: Department of Agriculture

9/29/98
 9/29/98 11:11 AM
 REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- X 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

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|---------|----------------------|---|
| 9/29/98 | <u>A. Bassart</u> | HOUSE COMMITTEE AGRICULTURE & RURAL AFFAIRS |
| 9/29/98 | <u>Linda Kullman</u> | SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS |
| 9/29/98 | <u>Kim C. Garner</u> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL |
| 9/29/98 | <u>Cynthia She</u> | LEGISLATIVE REFERENCE BUREAU |

September 28, 1998