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SEPTEMBER



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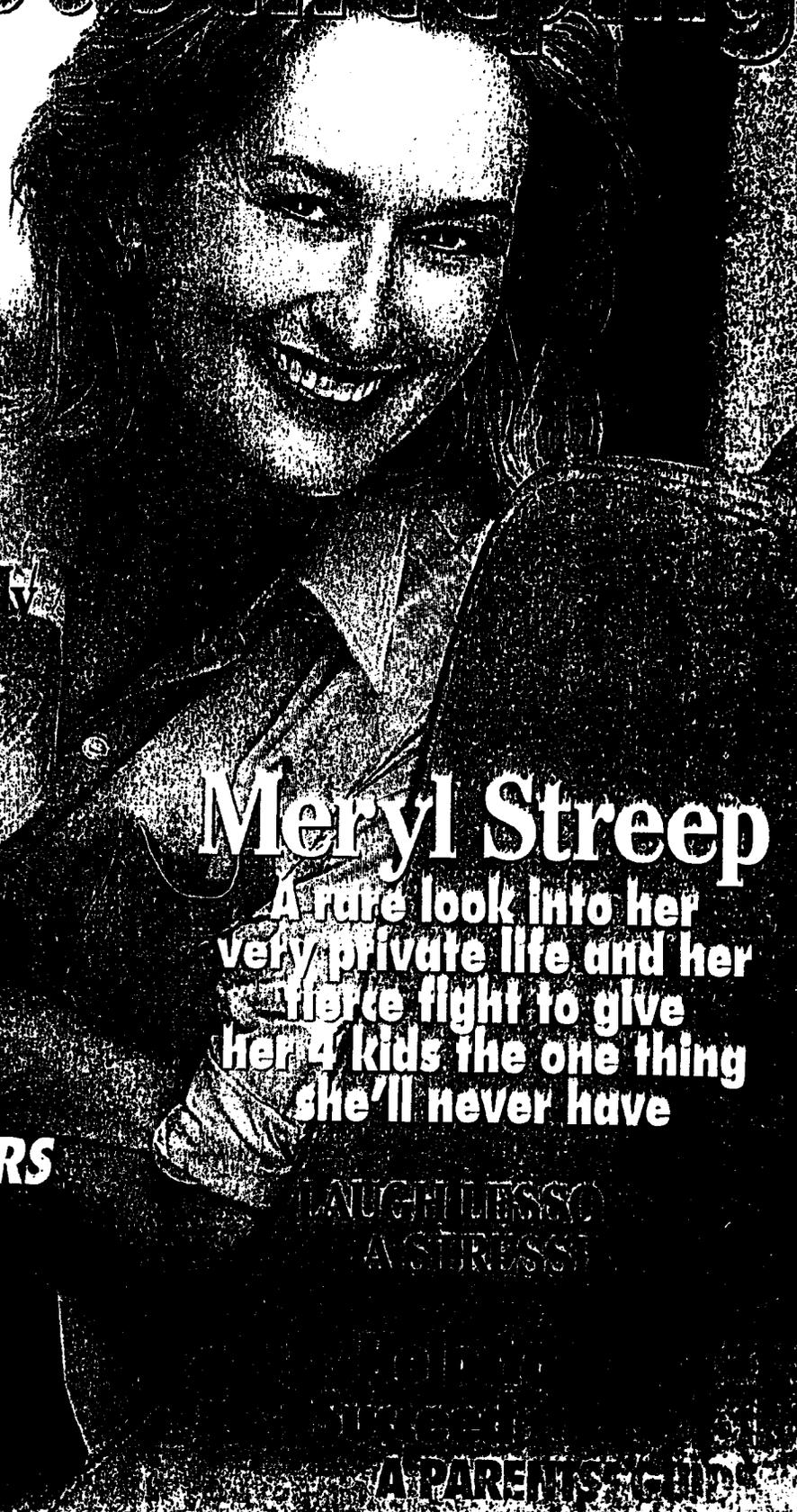
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A PARENTS' GUIDE

GOOD HOUSEKEEPING INVESTIGATES

BY BOB TREBLCOCK

The Price Is...

Amid a morning of frenzied shopping near her home in suburban Columbus, OH, recently, Renee, 51, spotted the perfect gift for her dentist-husband at a local department store: a brushed-leather bomber jacket that was the bargain of the season. Not only had the price been slashed from \$330 to \$135, but there was a storewide 33 percent-off sale *and* Renee had a coupon in hand for 20 percent off any store purchase.

It seemed too good to be true, and it very nearly was.

After the salesclerk passed a scanner over the bar codes on the jacket's price tag and the coupon, the computerized cash register flashed a \$90 total. Renee thought that sounded steep considering all the discounts, but she hadn't actually done the math, so she paid without questioning the price. "There were people behind me, and I didn't want to hold up the line." Between the cash register and the parking lot, though, an inner voice of doubt continued to nag.

Renee returned to the store and asked the clerk to double-check the price. Sure enough, when the numbers were all keyed in by hand, Renee discovered she'd been overcharged nearly \$20.

In our brave new computerized world, we often assume that checkout-line scanners, now found in nearly every major discount, department, drug, and grocery store, are finely tuned models of accuracy—or, at the very worst, that occasional pricing errors are strictly nickel-and-dime stuff. But scanner errors are much more common than you might imagine—and retail overcharges may be costing consumers as much as billions of dollars every year.



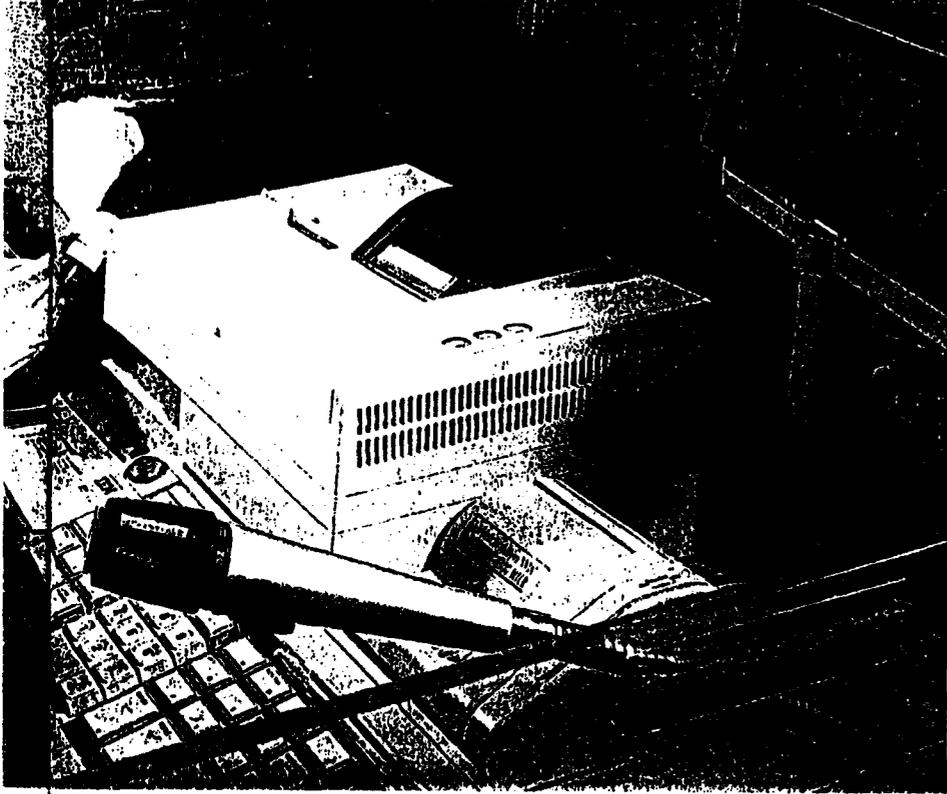
Overcharges at the cash register are more common than ever—thanks to those high-tech bar-code scanners. How to protect your pocketbook.

"Going through a checkout line with a scanner is like rolling the dice," says Bill Stephans, deputy agricultural commissioner and scaler of weights and measures in San Diego County, whose department inspects scanners. Last Christmas, Stephans's inspectors bought 375 items from 32 discount and department stores. They discovered that 11.5 percent were mispriced—and of those items, twice as many were *over*priced as were *under*priced. Stephans says that after projecting such losses over an entire year's worth of shopping, he puts the annual net loss to

San Diego County consumers at \$33.5 million. Statewide, the Department of Agriculture has estimated that scanner overcharges cost Californians as much as \$250 million a year.

Across the country, nearly 5 percent of all retail transactions are scanned with an incorrect price, according to a 1996 Federal Trade Commission study. And the percentage is quite a bit higher for the chief offenders: department stores, drug stores, hardware stores, and discounters. (For example, in 1996, before it agreed to correct its error rate in a settlement

Wrong



with Boston's Inspectional Services Department, the Osco Drugs chain in Boston had an average error rate of 77 percent; overcharges were three times as common as undercharges.) Factor in promotional sales, peak shopping seasons (Christmas, Memorial Day), and today's downsized, overworked sales forces, and you have a recipe for chaos.

Few are accusing stores of being out-and-out scam artists. It seems clear that plain old human error is the culprit. But some observers wonder whether retailers are doing their best to clean up the mess. "If you catch the wrong price, the store will give you the right price," says Stephens. "If you *don't* catch it, well, the store made a little money. That may not be the retailers' attitude, but it can be looked at that way." Mary Bach, a former Pittsburgh-area teacher turned consumer advocate who has battled retailers like

Wal-Mart, Kmart, and Ames over scanner errors, also harbors suspicions. "If I were to change the price tags on an item in a store to get a lower price, I would be prosecuted," she fumes. "But when stores do it to a customer, they throw up their hands and say it's human error. I've heard that one too many times."

It was a dash into a store to buy a new T-shirt that put John Eade, Boston's commissioner of inspectional services, on the trail of scanner error. The shirt's price tag read \$11.99; a sale sign advertised everything on the rack for \$5.99; the cash-register scanner charged him \$6.99. In 1996, the first year that inspectors surveyed Boston's scanners, 22.5 percent of products were mispriced; of that, almost twice as many mistakes were overcharges. It's been estimated that Bostonians are overpaying nearly \$16 million a year because of scanner errors.

Results were similar in Michigan. "When we began inspecting a few years ago, mistakes ran as high as twenty percent, and sometimes more. I was convinced that the scanners were scanning you unless you were careful," says Frank J. Kelley, Michigan's attorney general. "Negligence pays, so there's no incentive to fix it."

How Mistakes Are Made

So what exactly has to be fixed? Experts say the technology is not to blame. The bar-code system was created, in fact, to eliminate errors by removing the human element from the equation. Bar-code scanners misread just one in every 80,000 labels, according to David Collins, president of the Data Capture Institute, a research and consulting company for the bar-code industry in Plymouth, MA. "If products scan wrong for very long, it's not the technology," says Collins. "It's bad store management."

Developed some 30 years ago, bar codes and scanners were first installed in a store—Marsh Supermarket in Troy, OH—in 1974. Within years, scanners were ubiquitous in grocery stores—and so were pricing errors. While the grocery industry has spent millions of dollars to hire price-verification managers to ensure accuracy, the rest of the retail world—where scanners have become commonplace over the last five years—has yet to catch up in terms of goof-proofing their systems.

Here's how bar codes and scanners work: Every item is assigned a unique product code made up of two strings of numbers representing details right down to size and color. The numbers in a bar code are known as a stock keeping unit (SKU). Each SKU is assigned a price, which is then entered into a computer. When a cashier passes a scanner over a bar code, a laser light reads it and, *voilà*, the computerized SKU price appears on the cash-register terminal.

The first place gremlins can creep into the system is the headquarters of the national retail chains, where prices are set and then shipped to each store on a computer disk or transmitted via the Internet. A mistake made at headquarters is passed along to every store like a computer virus.

More often, mispricing errors seem to



Are You Being Overcharged?

For Michigan residents, Christmas 'tis the season to be jolly—as long as Santa doesn't slip a copy of the state attorney general's annual holiday report on retail overcharges into their stockings.

In 1997, pricing mistakes (under- and overcharges) ranged from 23.7 percent at JCPenney to 5.5 percent at Kmart, says State Attorney General Frank J. Kelley. After accounting for undercharging errors, Michigan consumers were overcharged by an average of 2.4 percent on each shopping trip last year. While less than three cents for every dollar spent sounds like small change, it adds up to an additional \$2.6 million in pure store profit on every \$1 billion's worth of sales, Kelley estimates.

Here's a random sample of mispricing uncovered at stores last Christmas:

STORE & LOCATION	ITEM	ADVERTISED PRICE	CHARGED
Montgomery Ward Waterford, MI	Infant outfit	\$13.49	\$17.99
Sears Fashion Square Mall Saginaw, MI	Christmas wreath	\$11.04	\$12.99
Hudson's Waterford, MI	Girl's purse	\$7.50	\$10.00
Mervyn's Pontiac, MI	Plush Santa	\$7.49	\$7.99
Kmart Bloomfield Hills, MI	Infant outfit	\$9.74	\$12.99
JCPenney Woodland Mall Grand Rapids, MI	Jewelry box	\$10.50	\$15.00
Frank's Nursery & Crafts Warren, MI	Door ornament	\$6.29	\$8.99
Meijer Saginaw, MI	Disney overall set	\$9.74	\$12.99

be part and parcel of today's ultra-competitive retail climate. "Whenever we or one of our competitors runs an ad with a sale item, the other stores change their prices to match it," says Dave Ritzman, director of customer service and education for Mercantile Stores West. But in the stores themselves, employees aren't altering bar codes to keep up with all the pricing fluctuations—often because of understaffing.

"The biggest complaint I get from store managers is that mistakes happen over and over because of a lack of manpower and a lack of commitment from the top," says Ken Butcher, a weights and measures coordinator with the National Institute of Standards and Technology (NIST), an agency of the U.S. Department of Commerce.

In San Diego, retailers have blamed widespread errors on Christmas-shopping mayhem, when battalions of untrained temporary workers arrive just as special sale days send prices haywire. So, last February, after the holiday madness had subsided, Bill Stephans sent his inspectors back into the field. The result: Things were even worse. During the holidays, errors had been detected at roughly one third of the surveyed stores; now they were found at two thirds. And, once again, there were twice as many overcharges as undercharges. Even Stephans was shocked.

Making Shopping Safe

In an effort to get retailers to shape up, the Department of Commerce has set an industry goal of a 2 percent error rate—meaning that just two out of every 100 products purchased would scan incorrectly, including overpriced and underpriced items. But, in a business rife with pricing blunders, this is an ambitious goal. Even if it were met, a typical superchain would still incorrectly scan about 46,000 items each year.

Government officials have found that one way to motivate retailers to do a better job is by shining a light into the dark corner of overcharging. Michigan inspects stores every Christmas and then releases the results to the press. "We found the only way was to embarrass them publicly," says attorney general Kelley. Since 1994, when the Yuletide reports began, the state's scanner-error rate, which includes underpricing, has dropped from 20 percent to 13 percent. Michigan has also passed a consumer rebate law that awards overcharged customers between \$1 and \$5 (in addition

"If products scan wrong for very long, it's not the technology," says one industry consultant. "It's bad store management."

to reimbursement of the amount overpaid).

Other states, among them Texas and Kansas, and some cities, such as Seattle, have started taking a tougher look at store scanners. Thanks to all this inspection, errant stores are being socked with steep fines. In 1994, Kmart, under California's unfair business practices law, was hit with nearly \$1 million in penalties and fines for persistent scanner violations. In recent years, Montgomery Ward has paid more than \$150,000 in fines in Kansas alone, including a \$90,000 settlement this past March.

Some retailers are voluntarily working hard to make changes. After several poor inspections, Mercantile Stores West shut down the scanners in its Jones department stores in Kansas for nearly 14 months so additional trained personnel could be put into place. "We didn't want the consumer thinking we're trying to manipulate the prices, and it's up to them to catch us," says Dave Ritzman. "We wanted the stores to take this seriously."

Both Kmart and Wal-Mart now have rebate policies similar to the Michigan law, awarding \$3 to overcharged consumers. Wal-Mart has also installed test scanners in its stores so customers can verify whether the on-the-shelf price matches the scanned price *before* they get to the checkout line. And Kmart has sent price-verification managers to high-volume stores with a tendency toward pricing problems. "We take the trust of the franchise that we have with our customers seriously," says Mary Lorencz, Kmart's director of media relations.

The combination of bad publicity, tougher regulation, and stiff fines is starting to pay off. In communities that police their retailers, not only have error rates come down, but underpricing mistakes have begun to exceed overpricing ones. In 1997, a year after Boston's first public survey, the 22.5 percent error rate sank to 4.7 percent; only 40 percent of the errors were overcharges.

Still, relatively few communities can afford to hire scanner inspectors. That's why many states are watching to see what happens to a bill introduced by State Senator Quentin L. Kopp (I-CA). Under Kopp's plan, retailers would pay a nominal annual fee to the county for their scanners, just as gasoline stations pay a fee for each pump. That money would then pay for additional government inspectors. Not surprisingly, California retailers are hotly

contesting the bill. "They don't want us to have the money to uncover just how much of a problem there is," says San Diego County's Stephans.

Meanwhile, customers must keep a sharp eye on the cash register and always check receipts against on-the-shelf prices and tags. While it might sound tiresome to hunt down scanner error at every turn,

it's the only way to make sure that what you see on the shelf is what you pay at the cash register. ★

To lobby your state to enact more programs to protect consumers from scanner overcharges in any of the ways described here, write to your state legislator, or your state's weights and measures office or its local department of consumer affairs.

One Consumer's Crusade

Mary Bach, 54, knew that waging a court battle against the largest retailer in the land wasn't going to be easy when she took on Wal-Mart over scanner error. But that's what a drawerful of mispriced bras can do to someone.

Bach, a former high school teacher turned consumer advocate, was shopping at the Wal-Mart in Greensburg, PA, in December 1993. At the checkout counter, two of her four items scanned wrong—she was asked to pay \$4.93 for a baby sleeper on sale for \$3.50, and \$7.46 for a Hanes Her Way bra sale-priced at \$6.96. Bach pointed out the mistakes and was then promptly charged the correct prices.

The following month, Bach spoke about checkout-scanner problems at a national conference sponsored by the National Institute of Standards and Technology (NIST). After her talk, a Wal-Mart executive apologized and told Bach about the store's policy: Any customer who is overcharged for an item is entitled to \$3 off the price of any product costing more than \$3; items costing less than \$3 are free. Bach appreciated the information, but was incensed that the clerk hadn't offered her the discount back at the store.

A few weeks later, Bach returned to her local Wal-Mart to purchase a second bra for her daughter. "The bra was still priced at \$6.96, and it still scanned at \$7.46," she says. Over the next year, Bach purchased 11 more bras at the Greensburg store. She also bought bras at Wal-Marts in Fairfax, VA; Hilton Head Island, SC; and Mays Landing, NJ. They were all marked at \$6.96 in the aisles, yet each and every one scanned at \$7.46 at the register. Each time, Bach told the cashier, who corrected the mistake and gave her the \$3 discount due her for the error.

The last straw came in June 1995, when

Bach was charged \$2 for a lipstick and a bottle of nail polish that were advertised on sale for \$1. It came on the heels of having been also overcharged for items at nearby Kmart and Ames stores. She sued all three retailers in the local district courts for violations of the Unfair Trade Practices and Consumer Protection Law. In each case, she sought the minimum required by law to file a claim: \$100 plus costs.

Ames settled out of court with Bach for \$136.50. "She was right, and it was helpful," says David H. Lissy, senior vice president and general counsel at Ames. Ames now more closely manages its store-by-store price-verification system, he says. Kmart paid Bach \$276 to cover the costs of her suit. "We pleaded guilty because we

A manager explained that when the bra's price had been raised some time earlier, employees had failed to remove signs advertising the sale.

wanted to do what's right," says Mary Lorencz, Kmart's director of media relations.

But rather than pay a \$133.50 judgment, Wal-Mart fought back. The store didn't deny that scanning mistakes had occurred, but a manager explained that when the bra's price had been raised some time earlier, employees had failed to remove signs advertising the sale price. Since Bach never lost money—whenever she brought the overcharge to the store's attention, the mistake was corrected—Wal-Mart argued that she didn't meet the requirements of the unfair trade practices law. The court panel ruled in Wal-Mart's favor; Bach lodged an appeal, but it was dismissed.

Bach was out the \$2,000 she spent on legal fees, court costs, postage, and copying, but she hasn't given up her cause. "There are more errors than retailers want to admit," she says. "There's a real problem out there."

Textile exhibit features homages to feminine power

SEE RUGS, PAGE E-4

Darrell Sapp/Post-Gazette

Something about Mary Bach makes her scrutinize scanners for mispricing

By Cristina Rouvalis
Post-Gazette Staff Writer



Annie O'Neill/Post-Gazette

Mary Bach, a crusader against inaccurate scanner prices, is now going after Hechinger. Bach, of Murrysville, has previously sued Wal-Mart for overcharging her at a checkout scanner.

The last time Mary Bach really got going, she was tussling with Wal-Mart over the price of bras. The Murrysville homemaker sued the world's largest retailer and accused it of overcharging her for a \$6.96 Hanes bra via its checkout scanner. Bach squared off with a formidable team of corporate lawyers, and ultimately her fraud case against the \$117 billion corporation was dismissed last summer.

But if you think Bach is chastened after a disappointing end to her two-year legal battle, think again.

The scanner lady is baaaack.

Her persistent — some would say obsessive — campaign against inaccurate scanner prices is aimed at another big corporation — Hechinger. She is claiming that the home-improvement chain misrepresented prices for gardening gloves and a toilet gizmo when she shopped there in March and April. She plans to represent herself again in the small claims suit, which is scheduled to be heard in front of District Magistrate Mark B. Devlin in West View on Monday.

Never mind that Bach says she only paid three cents more than the \$2.55 shelf price for a pair of flowered gardening

SEE MARY, PAGE E-2

Lena Horne has just a new CD. **Page E-5.**

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Consumer advocate Mary Bach loves to scrutinize scanners for overpricing

MARY FROM PAGE E-1
gloves. In fact, that kind of quibble just sets her off more.

**INCLUDED. IT'S
NG IN YOUR FIRST
RYE ONE HOME.**

RAY NISSAN
343-1111

Any error is an error. It's a misrepresentation of price," she said, her voice rising with indignation.

Daniel Murphy, a D.C.-based attorney representing Hechinger, said the chain did a thorough audit of prices after Bach complained. "We strive for 100 percent accuracy. We recognize the challenge. We are pleased Ms. Bach brought the problem to our attention."

But Murphy also said: "This is really her personal crusade, and Hechinger is the latest target. I don't know what her motivation is." Bach, a 53-year-old mother of two with short white hair, is not your typical shopper who is impatient to get in and out. The self-styled con-

sumer advocate drives a red Neon with a license plate that reads "I QPON" and goes in with prices imprinted in her head. She's poised to protest whenever the scanner price doesn't match the shelf price. Never mind if the person behind her in line is harrumphing at her or if the clerk slouches her an icy stare.

Bach is never shy about talking to the manager about why the mistake occurred and how the store can correct it. If it takes 45 minutes to get her points across, then fine.

"I am sure some might characterize me as having a strident tone but I try to remain calm." Enumerating like the high school social studies teacher she once was, Bach said: "This is much broader than Hechinger. I am making an indictment of lots of people in retail

Somebody has to do something about this. If I have to take them on one at a time, I will."

Nobody who has spent much time with her doubts her resolve, which seems to be building with her 15-year scanner campaign. She has been interviewed by Katie Couric and Phil Donahue on national TV. She was recently interviewed for an upcoming feature in Good Housekeeping magazine. People call her on the phone and stop her on the street to give her consumer horror stories.

Hangings in her house is a plaque that says, "If Mary Bach ain't happy, ain't nobody happy." It is a 50th birthday gift from the Pennsylvania Food Merchants Association. Randy St. John, a vice president of the association, said Bach is "very reason-

able, well-informed" and not strident. "I don't think she has any other agenda than she wants: to be treated fairly" and wants other consumers to be treated fairly.

But some retailers roll their eyes at Bach's name. Howard Davidowitz, a New York retail consultant, has never met her, but thinks her crusade is eccentric. "This is how she spends her time: running around to stores, pointing out scanner errors — it just seems highly unusual. But maybe she is doing a service if it calls something to management's attention that is wrong."

Bach thanks her for doing a "valuable public service." She says scanner fraud costs consumers billions.

When she walked into the Hechinger's in Monroeville on March 29, she was thinking only of spring planting. She picked up some potting soil, bulbs, gardening gloves and a toilet flapper (billed as a cure for toilets that won't shut off).

The garden gloves were scanned at \$2.55, three cents more than the listed price. The flapper was scanned at \$2.96, 50 cents higher than the price marked. She told both the clerk and the store manager and got the price adjustment.

On April 2, she went to the Hechinger store in West Mifflin store to buy more topsoil. Then she also bought another pair of gardening gloves and a flapper to see if the store had corrected the problem. She said she was overcharged again, and her money was refunded.

Later that evening, she drove to the Hechinger in Ross, and she bought more gardening gloves and a flapper. Once again, she said, the scanned price was too high.

Instead of asking for her money back, she gritted her teeth and let herself be overcharged.

She said she let herself get ripped off because of her past experience with Wal-Mart. She said her suit was dismissed because the store made good when she pointed out the error.

She said Hechinger's store manager in Ross, Ernie Ernest, was polite. He offered to refund her money, but she told him she was considering a legal action and was unwilling to take the 53 cents back.

Ernest declined comment.

Bach said she followed up her bad shopping experience with a call to the Bureau of Ride and Measurement Standards, part of the Pennsylvania Department of Agriculture. She said an audit by state inspectors at the three Hechinger stores revealed an error rate between 5 and 12 percent — way above the two percent acceptable rate. During a follow-up re-inspection, the stores came within the 2 percent rate.

Bach calls the initial high error rates "a failing grade."

But Charles Bruckner, director of the Bureau of Ride and Measurement Standards, said the first inspection was done when Hechinger was in the midst of a merger with Builder's Square. "I think it is a good reason. Two major computer systems merging are complex."

"No one has ever complained about garden gloves before," he said. "If we get complaints, most of it is on gasoline."

Murphy said the chain was in the midst of the merger.

Bach said her suit, which seeks only \$200, is a message lawsuit.

"I don't care if anyone calls me names over this. These incorrect prices are not my fault."

Every year the Greater Pittsburgh Chamber of Commerce recognizes a woman in our community who con-



recipient by business, professional and community leaders. If you know a

Murrysville's Mary Bach scrutinizes the "war zones" of the marketplace to educate consumers about pricing accuracy.

Passion for smart shopping makes woman an expert on pricing errors

By Kevin DiCola

An over-ring here, a misleading advertisement there, and before you know it, you've unwittingly become another innocent consumer who has fallen victim to overpricing tactics.

The gadget that usually pulls the wool over your eyes is the cash register's electronic scanner — at least so says a local consumer advocate who is nationally known for exposing price discrepancies in the marketplace.

Mary Bach has spent the last 12 years on a mission to educate consumers about smart shopping.

"It's a war zone," says the Murrysville housewife.

Scanner mistakes have become so common, she says, that consumers are playing "roulette" every time they reach the checkout line. "You never know what the price will be."

As a member of a special task force of consumer advocates, retail executives and weights and measures officials, Bach addressed the national conference of the National Institute of Standards and Technology in Bethesda, Md., about scanners at checkout registers. She also spoke at the National Conference of Consumer Agency Administrators annual meeting in Tucson, Ariz.

On July 19, Bach will fly to San

NEWSMAKERS IN THE EAST

Diego to make a presentation to the National Conference on Weights and Measures. She was asked to represent the consumer's perspective on pricing accuracy and problems associated with scanners in all types of retail.

Not bad for someone who originally wanted only to get the best value for her buck on a tight food budget.

"I am very concerned about my own household," says Bach, whose car license plate reads I-QPON. "We as consumers should manipulate the marketplace to our own best interest to cut our total grocery budget."

Bach got involved by "simply clipping coupons" after the birth of her first child, Alison, now 21, and a student at California University of Pennsylvania. "Since I had to leave teaching to care for my family, I had to start keeping a close eye on my budget," she recalls.

Her passion for smart shopping has grown over the years into a crusade to protect consumers from the dangers of paying too much for a product.

Locally, she has taught many "smart shopping" classes at Penn-Trafford and Franklin Regional

high schools and Community College of Allegheny County. She is a newspaper columnist and a regular guest on Pittsburgh radio and television talk shows.

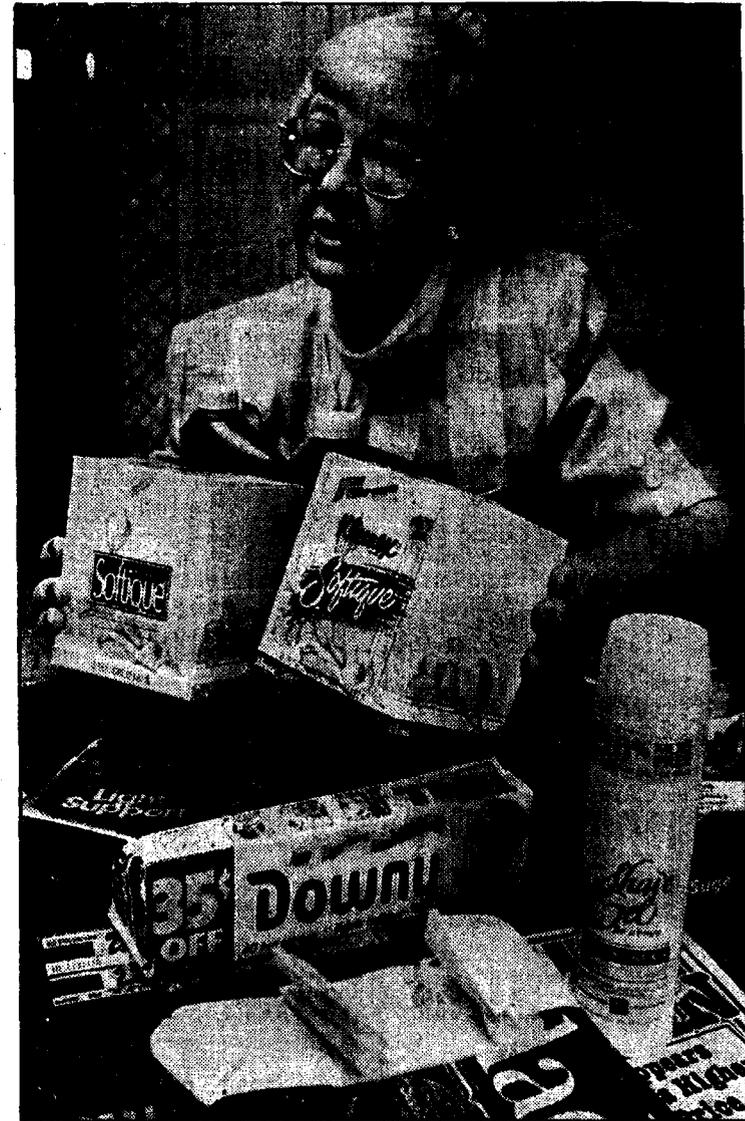
Bach can tell countless tales of her exploits in area supermarkets and retail stores.

Her "centerpiece" story, one that she recounted at the Bethesda conference, first occurred on Dec. 12 in the new Wal-Mart super store in Greensburg. Bach bought numerous items that day, and discovered at the checkout register that the scanner had overcharged her for a bra.

"It was marked \$6.96 right on the product, but the register scanned it a \$7.46. After a bit of a hassle the [lower] price was verified."

Bach was not told at the time that the store's price guarantee policy would have given her \$3 off the price for every caught mistake. Discovering Wal-Mart's policy at the conference in Bethesda, she decided to test the store's promise to change the scanner to the correct price.

Bach tested the store 10 more times with 10 different sales clerks over the next few months, and each time the scanner read the price of the bra at \$7.46, even though the hang-tag price was marked \$6.96. Each time she got the price guar-



Bob Donaldson/Post-Gazette

Mary Bach explains how two boxes of tissues that were scanned at different prices are an example of product downsizing. The box on the left is the older product; the box on the right is the new product with 10 fewer tissues. The older product was on sale to exhaust the inventory.

SEE BACH, PAGE EW-3

Smart shopper becomes advocate for consumers

BACH FROM PAGE EW-1

antee discount. Bach has the register receipts from each transaction.

Paul Wanstreet, manager of the Greensburg Wal-Mart, could not be reached for comment. However, Jane Arend, spokesperson for Wal-Mart's corporate office in Bentonsville, Ark., was familiar with the Bach scenario. She said the Greensburg store's scanner problems had been ironed out and that Wal-Mart had given Bach a gift certificate.

"We guarantee satisfaction," said Arend.

Bach says that shoppers must be alert at all times to catch mistakes.

"Customers must speak up when they see an error."

Too many times, however, customers either don't see the errors or they shrug off the discrepancy to avoid time-consuming hassles in the checkout line.

Bach has been a leading voice in the fight to place more regulations on register scanners ever since they first gained acceptance in supermarket chains more than 10 years ago.

Because the scanners eliminate the need for sticker prices on products, consumers must rely instead on posted sales signs, shelf tags or

the scanner.

All too often, she says, the scanners do not accurately reflect posted prices. She has noted a 3-percent to 4-percent error rate in scanner rings, which amounts to about 1,200 incorrect prices per every 30,000 items.

Other consumer advocates agree. At the conference at Bethesda, Bach and other experts discussed ways to make sure prices charged match the prices advertised.

Next on Bach's agenda is the new 1-percent increase in Allegheny County's sales tax, which went into effect last week.

"There are a lot of gray areas in what the county calls taxable and non-taxable items," she says. "For instance, a can of dog food is taxable, but a flea collar is not."

Bach, a native of Savannah, Ga., has a degree in education from Georgia Southern University and did graduate work at the University of Kentucky and Penn State. She is the wife of Leonard Bach, who is in charge of purchasing at Westinghouse Machinery Technology Division in Large. The Bachs also have a son, Jim, 17, a senior at Franklin Regional High School.

Kevin DiCola of Plum is a freelance writer.

SUNDAY MAGAZINE

VOICES EAST

VE SECTION ■ PITTSBURGH POST-GAZETTE ■ AUGUST 6, 1995

CONSUMER ADVOCATE *Mary Bach has made it her job to make sure shoppers aren't cheated.*

'I realized the marketplace can be quite manipulative'

In 1980, Mary Bach disagreed with information being reported on a TV station. She talked to the reporter and, eventually, was invited to do undercover comparison shopping for the station. It started a long-term relationship with DKA-TV. The station called on her periodically for views on consumer issues.

Eventually, other media outlets sought Bach's expertise, including Tri-State Food News, a grocery industry trade paper for which she writes a column called Consumer's Eye View.

Bach's tenacity recently won her a suit against a discount chain for misrepresentation of price, and she has similar suits pending against two other discount chains.

But Bach is most proud of helping to shape recent regulations on pricing accuracy for scanners. On July 17, she addressed the laws and regulations committee at the National Conference on Weights

and Measures in Portland, Maine, where she discussed pricing-accuracy standards for the marketplace. The organization, with her input over the past two years, has written and adopted regulations concerning scanners for all types of retail stores.

Bach, 50, recently was elected mayor of Murrysville. She told Post-Gazette staff writer Jean Bryant how she became a consumer advocate.

I'm a price-driven shopper. I try to maximize my budget in my family's best interest. And when I'm promised a price, I don't like to be charged a higher price.

When I call an error to the store's attention, taking all the appropriate measures any good consumer will take — even filling out forms and signing my name to get a reimbursement — I expect the store to make the price right for every other shopper. I follow up by going back and buying the same item to see if corrections have been made.

My attitude is no consumer who goes into a store in good faith to purchase an item they

need for their family at the promised price deserves to be cheated.

As a homemaker, I realized the marketplace can be quite manipulative and there were situations where I was being wronged — being charged too much sales tax, being misled by advertising, being treated unfairly by store personnel. But I knew if these situations were happening to me, they must be happening to a lot of others.

Friends encouraged me to put something together on how I resolved things I had encountered. I did, and taught adult education classes on consumerism in two suburban school districts.

Often, consumers complain to the wrong people. We fuss with a checkout clerk or cashier but they are not in a position to help us directly. Instead, we should speak with the store personnel in charge. If they can't help, try the next level: the wholesaler supplying the store or the chain's corporate level.

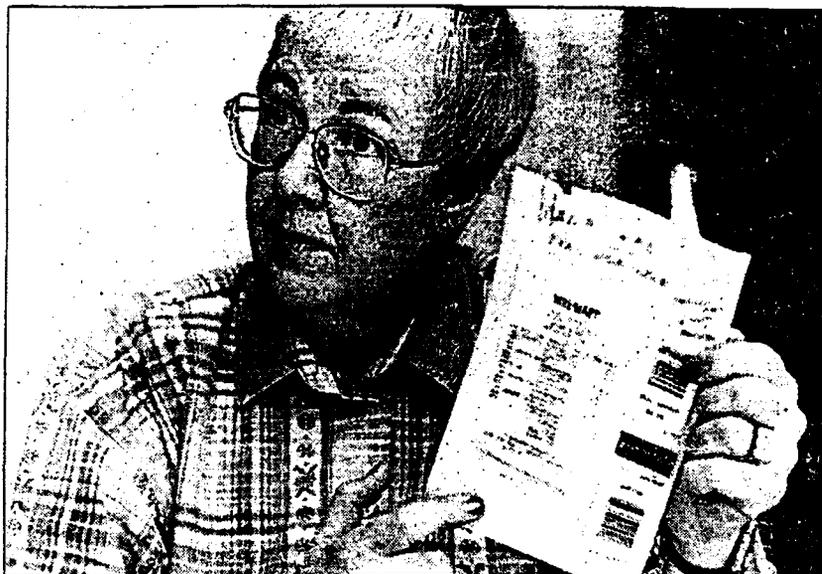
I'm gratified that I've been able to help consumers. And that I've had input in legislation allowing random sampling of stores for pricing accuracy. And this is a housewife from Murrysville.



V.W.H. Campbell Jr./Pos

Mary Bach, with a display of some of the products that have been involved in legal actions against retailers.

Wal-Mart was ordered to pay \$100 plus \$39.50 in costs for violating "unfair trade practices and consumer protection law."



Robin Rombach/Post-Gazette

Mary Bach of Murrysville says, "... if I were to steal something, it would be called shoplifting..." But when she is overcharged, "the store shrugs its shoulders and says, 'Sorry it's a mistake.'"

Pittsburgh Post
Gazette
September 7, 1995

Wal-Mart a loser in price fraud suit

By Cristina Rouvalis
Post-Gazette Staff Writer

Mary S. Bach, self-appointed sleuth of bogus prices, points to Exhibit A on the kitchen table of her Murrysville home: a stack of 13 Hanes bras, all marked at \$6.96.

But the price read by the scanner at the Wal-Mart in Hempfield was \$7.46, she says.

The 51-year-old mother of two did more than just demand her money back or a discount.

She carted the bras, some nail polish and lipstick (another exhibit) and a stack of receipts into District Justice Court in Greensburg, and argued on her own behalf in a lawsuit against the nation's largest retailer.

Bach, who speaks with the deliberate enunciation of the high school teacher she once was, alleged that Wal-Mart had repeatedly overcharged her for merchandise even after she had brought it to their attention.

Yesterday, Bach won the small claims case -- a victory for a consumer advocate who has become a vigilante of scanner prices for the past decade. It wasn't the first time she's taken on a national retailer and won.

"I'm just ecstatic," she says.

Admittedly Bach didn't get rich. Wal-Mart was ordered to pay \$100 plus \$39.50 in court costs for violating "unfair trade practices and consumer protection law."

But money wasn't the point. It was the principle. Which is why Bach inspects receipts with the same vigor of a customs officer rifling through suspicious baggage.

"This is not some crazy little old lady saying, 'They charged me a nickel too much,' she says. "The idea of a lawsuit appalls me. I have been speaking out against this for 10 years."

Though Bach has taken on other national retailers, she was the most angered by the Bentonville, Ark.-based Wal-Mart.

She says she was overcharged for the 13 bras she bought over an entire year for her daughter and herself.

She even tested the prices of the same bra in stores in Fairfax, Va. and Hilton Head, S.C. "They all scanned wrong," she says with the sat-

isfaction of an investigator who has just unearthed an important clue.

"Wal-Mart has an attitude," Bach says.

The company pleaded not guilty to the charges.

"I received very few if any complaints on this issue," says Del Sloneker, district manager for Wal-Mart. "She has seemingly singled us out for this. What her motives are, I don't know."

"In our country, there are retail choices up and down the street," Sloneker says. "If we aren't able to satisfy her, she should shop somewhere else. We resent her accusation."

Kmart had a different response. It pleaded guilty to Bach's small claim suits after she found price discrepancies at its New Kensington and Monroeville stores. Partly because of her suits, the chain is test-marketing a scanner guarantee policy in Western Pennsylvania, offering \$1 off for any discrepancy in pricing, a spokeswoman says. (Wal-Mart already has a scanner guarantee policy.)

David Szatkowski, regional manager for Kmart, says, "There are a lot of Mary Bachs in the country. They keep you on your toes. You are not going to be in business long if you charge the wrong price."

Bach is the ultimate price comparison shopper. She clips coupons and reads sales fliers avidly. She drives a red Neon with a license plate that reads, "I QPON."

She can keep the prices of merchandise in her head so that she knows when the scanner spews out the wrong price.

She never yells at the checkout clerks, but has been known to argue her case before store managers for 45 minutes. Her best bet: four out of 11 items she bought were once priced wrong at a supermarket, she says.

Bach also counsels people who write and call her how to stand up for themselves and demand the advertised price.

"As a customer, if I were to steal something, it would be called shoplifting and it would be called a crime," she says. "But when I go to the store and am overcharged, the store shrugs its shoulders and says, 'Sorry it's a mistake.'"

"I am tired of being shopper-lifted," she says.

LOCAL NEWS

CONSUMER AFFAIRS

Bach's battle for scanner justice marches on

By Michelle Orner

Staff writer

Last week, Mary Bach, Murrysville councilwoman and renowned consumer advocate, lost a battle.

But her war goes on.

Mrs. Bach is now concerning herself with changing legislation dealing with price scanners.

She originally filed suit in July of 1995 against WalMart of Greensburg in district court. Mrs. Bach consolidated a dozen incidents when she was incorrectly scanned for items, including 12 Haines Her Way bras, into one case, hoping for the minimum award of \$100.

The magistrate's original ruling was with Mrs. Bach, who represented herself without counsel, in September of 1995, awarding her the \$100.

Ever since this decision, it has been a wrangling of legal wills, capped by last week's ruling against her in Westmoreland County Court of Common Pleas.

"I was never in this to try and make the money," said Mrs. Bach. "This was for a message. I saw no right for WalMart to cheat its customers."

"WalMart appealed the case, not for monetary loss, but so as not to admit to any fraudulence.

"It gets me a little upset when the word 'fraud' is used. My mother and family shop there as much as anyone else," said Paul Wonstreet, WalMart store manager.

Mrs. Bach claims that she is not pushing for WalMart to be caught in fraud.

"The crime I would want to have them admit to is the one that they committed, that they mismanaged the store's pricing, and in doing so, also mismanaged and misplaced the public trust that their signs always indicate they hold dear," she said.

After several hours of testimony in court Wednesday in front of a panel of



WITH BRAS galore, Mary Bach is works in her Murrysville home amid the many mis-scanned items she purchased at WalMart.

arbitrators, the actual events of Mrs. Bach's lingerie mishaps were revealed. Mrs. Bach refers to what she believes to have occurred at WalMart as "shopper-lifting."

Shopper-lifting is when a business, without the shopper's awareness, electronically raises the price of an item.

The first incident of incorrect scanning for Mrs. Bach at WalMart occurred on Dec. 12, 1993, shortly after

the location's grand opening, with 11 subsequent occasions leading into the summer of 1995. On that day Mrs. Bach was mis-scanned for a baby sleeper and a Haines Her Way bra.

When she reached the checkout counter, she was aware of the scanning error immediately.

The sleeper, which sat in a bin among other items with a sign above reading each item as \$3.50. Mrs. Bach's bra also had a price tag denoting the price to be \$6.96. The sleeper was scanned at \$1.93, the bra \$7.46.

"I am a very careful shopper and I know my prices. I knew the sleeper was \$3.50," Mrs. Bach said.

The prices were voided and corrected on this occasion, although Mrs. Bach was not informed of WalMart's national policy for mis-scanning, the Scanner Guarantee Policy.

The SGP states that any mis-scanning should be compensated via an item discount. According to the SGP, if the mis-scanned item was valued at over \$3, a discount of \$3 would be given, and if the price of the item was under \$3, it would be given to the customer free of charge.

Although WalMart remedied the mis-scannings via the SGP on all subsequent occasions, they did not cure the errors. On the next 11 trips to WalMart, Mrs. Bach was mis-scanned on every Haines Her Way bra she purchased, a total of 12, and a Wet and Wild lipstick and nail polish set.

"I was quite concerned after the second shopping trip as to what I believe to be misrepresentation of price," Mrs. Bach said.

"This store simply was mismanaged with ill-trained or untrained staff. This placed an undue burden on the unsuspecting customer," said Mrs. Bach.

After several incidents with the Haines Her Way bras, Mrs. Bach brought this error to the attention of

WalMart. A national convention on price scanners gave her the opportunity to mention her experiences to WalMart operations executives.

Showing her receipts and retracing her shopping trips, the executives promised that they would look into the situation for Mrs. Bach.

WalMart claims that they took extreme measures to solve the scanning problems, and Mrs. Bach was sent a letter of apology along with \$50 worth of coupons.

Dave Fitzgerald, current manager of the Greensburg WalMart, was at the time of the bra brouhaha, a co-manager at the WalMart in Butler.

Having previous experience with such handlings, Fitzgerald was called by his district manager, Del Sloneker, to head up a store-wide scanning audit during late January of 1994.

For two evenings every bar code in the store was test-scanned, and the results indicated that there was less than a 2-percent inaccuracy, which according to Fitzgerald, was a good showing.

The courtroom became heated when Mrs. Bach cross-examined Sloneker. She informed the court that she was asked not to shop at WalMart anymore by Sloneker.

"It was some frustration after the course of the year and the efforts to make it corrected for you. I personally felt like this was some kind of a vendetta," Sloneker replied about his comment to Mrs. Bach.

Sloneker also admitted to telling a reporter that he believed Mrs. Bach to have the supernatural ability to read UPC symbols.

Manager of WalMart's lingerie department, Debra Carroll testified as well, possibly discovering the loophole to the scanning mystery.

"There is an element of human error," Ms. Carroll said.

Mrs. Bach then insisted Ms. Carroll

put herself in the shoes of a consumer, and judge how many times an error be made before it should be corrected.

"You can't put a number on it. It shouldn't happen, but it does. Not only at WalMart, but at other places. I'm a consumer and it happens to me," Ms. Carroll said.

The concept of a "roll back" then entered the conversation, shedding light on what may have caused the scanning problems. WalMart receives its merchandise from vendors, who when given a discount on the merchandise a few times each year, pass the savings along to the customer.

When these savings are implemented, it is referred to as a "roll back."

When shipments of merchandise are rolled back, in this case the Haines Her Way bras for \$6.96 rather than \$7.46, the timings of the arrival of merchandise onto the sales floor and the commencement of the special price aren't always synchronized.

"It's clear that there were mistakes here. Mistakes that were (admitted) to," said Romel Nicholas, WalMart's attorney.

"WalMart has to this day taken blows from Mrs. Bach."

The arbitrators must have agreed. Mrs. Bach was disappointed with the panel's decision and she is not yet sure whether she will make an appeal, as she has 30 days to decide.

Feeling as though the current legislation on scanning errors may be to blame for the decision, Mrs. Bach is pouring all of her energies right now into changing the laws.

"The existing legislation was made in the '60s. This predates scanners which didn't come around until the '70s," said Mrs. Bach.

Mrs. Bach wants to change the law, even if it's only rewritten.

Using this appeal with WalMart as a banner, Mrs. Bach will be working on new legislation in mid-January.



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Pennsylvania Association, Weights and Measures

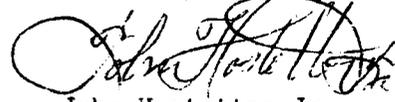
PO Box 2511
Lancaster PA 17608-2511

Pennsylvania Department of Agriculture
Bureau of Ride and Measurement Standards
2301 North Cameron St
Harrisburg PA 17110-9408

Dear Charlie:

Here are the proposed changes that the PAWM Legislative Committee came up with. We discussed your suggestion but decided not to include it. Thanks for all of your help in sending copies of the Bulletin.

Sincerely yours,



John Hostetter Jr
Sec.

THAT EQUITY WILL PREVAIL IN THE MARKET PLACE

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**Pennsylvania Association,
Weights and Measures**
PO Box 2511
Lancaster PA 17608-2511

November 6, 1998

Pennsylvania Department of Agriculture
Bureau of Ride and Measurement Standards
2301 North Cameron St
Harrisburg PA 17110-9408

Dear Mr Bruckner:

The Legislative Committee of PAWM makes the following proposed changes to the regulations published in the Pennsylvania Bulletin, Vol 23, No 41, October 10, 1998:

On pg 5117 Sec 5.2. (c) (3), we propose the regulation should be-
The inspection is conducted as part of a private, THIRD PARTY, certification program.

It is our opinion that only a third party program will ensure that inspections are unannounced.

On pg 5123 Sec 6.6 (b), we propose the regulation should be-
Responsibilities of installer or repairer. A registrant under this chapter shall promptly notify the Department OR APPROPRIATE CITY OR COUNTY SEALER of any commercial weighing or measuring device...

We feel that the installer or repairer should be able to contact the local weights and measures official directly. This will save time and result in less time between notification and inspection.

Thank you for your consideration.

Sincerely yours,

John N Hostetter Jr
Secretary

THAT EQUITY WILL PREVAIL IN THE MARKET PLACE

PennAg Industries Association

120 Lake Street • P.O. Box 329 • Ephrata, PA 17522-0329
Ph: 717-733-2238 • Fx: 717-733-3083 • E-Mail: PennAg@aol.com

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EPHRATA, PA

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November 3, 1998

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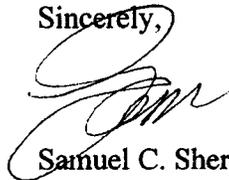
Mr. Charles M. Bruckner
PDA

Bureau of Ride and Measurement Standards
2301 North Cameron Street
Harrisburg, PA 17110

Dear Charlie:

Thanks for the opportunity to comment on the proposed regulations under the Consolidated Weights and Measures Act. We find the proposed amendments to be satisfactory and agree that proper training of examiners of weights and measures will benefit all Pennsylvanians.

Sincerely,



Samuel C. Sherk
Assistant Vice President
Grain & Feed Council
Director of Membership & Services

SCS/er



October 27, 1998

Tony Pagano
206 Northmont Drive
Verona, Pa. 15147

SEARCHED
SERIALIZED 10/27/98
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FBI - HARRISBURG

Mr. Charles M. Bruckner
Pennsylvania Department of Agriculture
Bureau of Rides & Measurement Standards
2301 North Cameron Street
Harrisburg, Pa. 17110

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Dear Charles:

I wish to make known my comments regarding the Proposed Regulations under the Consolidated Weights and Measures Act in the Pennsylvania Bulletin. There is a lot of good that can be said about the new law that was passed. To name a few, the registration requirement for all sellers, installers, and repair persons has been long over do. Establishing additional training standards for all State inspectors and county officials has always been a necessity in a good Weights and Measures program. The new law also addresses a much needed inspection program for (UPC) and (PLU) inspections. Although I have reservations regarding the importance every one places on the severity of errors occurring in scanning devices throughout the State.

My real thoughts and concerns are with the negatives that this new law brings as well. Act 155 has also given the Bureau added authority and an overwhelming responsibility, that it may have clouded the real tasks that confronts us. The major concern I have is with the elimination of Random and Standard Packaging Inspections. Every State and many County Inspectors I know shares the same concept regarding the importance of Packaging Inspection. When you look back to all of the prosecutions the Bureau has initiated, you'll find the majority came from inaccurate, or illegal packaging procedures.

One county inspector is disturbed because the State enticed him into purchasing expensive WinWam equipment and now the Bureau will not continue any Package Inspection. For the past four years I have been doing Package Inspections in the South Western Region. There are at least Two Hundred and Fifty retail establishments in that area. I have issued, in that time, Fourteen Warning Letters, and investigated at least one dozen Consumer Complaints regarding incorrect packaging procedures. Packaging errors, unlike UPS Scanning errors, are always against the consumer.

In the Pennsylvania Bulletin Vol. 28 No. 39 dated September 26, 1998 the Bureau has removed Packaging Inspection completely from any inspection period. This means that the only

way of evaluating any loss to the consumer would be only after they have filed a Consumer Complaint. Our past experience in package inspection has reflected as much as a thirty percent error rate. This could be a very substantial loss, without any extrapolation as they have done with UPC inspections. To place this Inspection Program on anything but an Annual basis would be unconscionable. With today's Consumer Advocates becoming more widespread, this is the wrong time to ignore such an important program that will benefit all Pennsylvanians. I mention this to you, Charlie, only because without a Package Inspection Program, you may be the one to suffer the consequence.

Respectfully your servant,

Tony Pagano
Tony Pagano

FORTHCOMING
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Sandusky
Gelnett

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COMMENT SHEET
FOR
MAY 6, 1998 DRAFT OF PROPOSED REGULATIONS
REQUIRED UNDER THE
CONSOLIDATED WEIGHTS AND MEASURES ACT

92 MAY 13 11 01 35

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A. OVERVIEW

The Pennsylvania Department of Agriculture ("Department") is preparing to proceed with promulgation of the regulations required under the Consolidated Weights and Measures Act. A draft of those proposed regulations is attached.

The Department will submit its proposed regulations to The Office of General Counsel on June 1, 1998. For this reason, if you wish to offer comments on the draft regulations, please direct them to the Bureau of Ride and Measurement Standards by **May 25, 1998**. This would allow the Department time to consider your comments before the promulgation process gets underway.

If you do not wish to offer comments at this point, or your comments are received too late, or if the Department does not implement your recommended changes, **you will be afforded another chance to comment**. Once the proposed regulations are published in the Pennsylvania Bulletin, there will be a 30-day public comment period, followed by comment periods for the House and Senate Agriculture and Rural Affairs Committees and the Independent Regulatory Review Commission. It is estimated publication of these proposed regulations will occur in July, 1998.

The Department will revise the proposed regulation into a "final-form" regulation, which will reflect revisions made as a result of the comments received. The Department will also assemble a document containing its response to all comments received with respect to the published proposed regulation.

B. FOOTNOTES

Comments correspond to the highlighted numbers appearing in the draft regulation.

The section of the draft regulations to which the comment is applicable follows the comment and is enclosed by parentheses.

1. This term appears at 3 Pa.C.S. § 4102. (§ 2.1)
2. Although earlier drafts of this proposed regulation repeated the definition of "commodity" verbatim from the Act (at 3 Pa.C.S. § 4102), several commentators stated this should more appropriately read "by weight or measure ..." or "by measure, unit or count ..." to address services priced by time or distance (such as parking meters,

laundromat dryers, car washes and taxi fares). The Department shares this concern, and has revised this definition accordingly. It is possible the Department will be required to make this definition conform more precisely with the Act as the regulation makes its way through the promulgation process. (§ 2.1)

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. (§ 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. This restates the requirement set forth at 3 Pa.C.S. § 4125(b). (§ 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, and the regulation at 70 Pa. Code § 39.54(4). (§ 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. It has also been revised to replace the former regulations at 70 Pa. Code Chapter 35. The authority to require notice of installation is in the Act, at 3 Pa. C.S. § 4113. (§ 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. This subsection was added to make it more likely inspections conducted by private certification programs will be conducted on an unannounced basis, and to decrease the potential a person might falsify inspection results or be pressured to alter inspection results as a result of an employee/employer relationship. (§ 5.18(b) and (c))

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 restates the current regulation at 70 Pa. Code § 35.3, which will be rescinded. (§ 6.6(d))

110. This restates the current regulations at 70 Pa. Code §§ 35.1 and 35.2, which will be rescinded. (§ 6.6(c))

MAY 6, 1998 DRAFT

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

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| 2.2. | Contacting the Department. |

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

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| 7.2. | Weighing and measuring devices affected. |
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CHAPTER 1. [Solid Fuel] [Reserved]

CHAPTER 2. GENERAL PROVISIONS.

- | <u>Sec.</u> | <u>Title</u> |
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| 2.1. | Definitions. |
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§ 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, measure or count or any service priced by weight, measure or count. ■

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 standards of weight and measure kept by the Bureau. ■■

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

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. [REDACTED]

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. [REDACTED]

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

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. [REDACTED]

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. [REDACTED]

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

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. [REDACTED]

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

Secretary - The Secretary of the Department.

Sell or sale - Barter and exchange. [REDACTED]

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

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. [REDACTED]

UPC scanning system - A universal product code scanning system. [REDACTED]

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 or Title</u>	<u>Category/Type</u>
202	Small capacity retail computing scales
None	Retail package shipping scales
206	Vehicle scales
203	Small platform scales which weigh items to 1,000 pounds
303	Truck-mounted fuel oil meters
305	Truck-mounted liquid petroleum gas meters
None	Compressed natural gas meters

(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

- | <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 prohibitions.
- 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 Pa. Bulletin _____, (_____, 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.

§ 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 _____ Pa. Bulletin _____, (_____, 1998) shall be considered a UPC/PLU Inspector's Certificate issued under this Chapter.

NOTE: TO BE FILLED-IN.

§ 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 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 prohibitions.

(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) Self-inspection prohibited. A Certified UPC/PLU Inspector conducting an inspection on behalf of a private certification program shall not be the person whose UPC scanning system or PLU device is the subject of the inspection. [REDACTED]

(c) Inspection by employees prohibited. A Certified UPC/PLU Inspector conducting an inspection on behalf of a private certification program shall not be an employee of the person whose UPC scanning system or PLU device is the subject of the inspection. [REDACTED]

(d) 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 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. #47

§ 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. ■■■

(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", a "Certificate of Conformance" 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 10 days of installation or within 15 days of 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 10 days of installation or within 15 days of repair, and affix a seal (as required) if the device meets the requirements of the Act and this part.

(d) Conditional short-term use.

(1) **Newly-installed devices.** If the installer has fulfilled the responsibilities described in subsection (b), and the inspection required under subsection (c) is not accomplished within 5 days of the installation, a newly-installed device may be used in commerce for a period of no more than 5 days, commencing with the 6th day from the date of installation and ending after the 10th day from the date of installation. The inspection shall be accomplished within this period of conditional short-term use.

(2) **Repaired devices.** If the repairer has fulfilled the responsibilities described in subsection (b), and the inspection required under subsection (c) is not accomplished within 5 days of the repair, a repaired device may be used in commerce for a period of no more than 10 days, commencing with the 6th day from the date of repair and ending after the 15th day from the date of repair. The inspection shall be accomplished within this period of conditional short-term use.

§ 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.

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§ 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 an annual written report to the Department, describing the following:

(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>
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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.

§ 8.1. 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.

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. ■■■

§ 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) **Weights and measures which may be inspected by a CEWM.** A State inspector, county sealer or city sealer must successfully complete the applicable training course listed at § 4.6 (relating to training courses), or any updated list published in accordance with § 4.6, 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. ■■■

CHAPTER 9. WEIGHMASTERS

Sec. Title

- 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.
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- 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. #58

Net weight - Gross weight less tare weight. #59

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

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Tare weight - The actual weight of only the vehicle. #58

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. #60

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. #61

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." [REDACTED]

(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. [REDACTED]

§ 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. [REDACTED]

(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).

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§ 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) **Typewritten or indelible pencil.** The original weighmaster's certificate shall be 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 for at least 2 years, at the place of weighing, a copy of each weighmaster's certificate he issues. 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. 996

(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. 997

(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. ~~§ 9.19~~

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. ~~§ 9.20~~

(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. ~~§ 9.21~~

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. 

* * *

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.]** 

* * *

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Mailing Address:
P.O. Box 12023
Harrisburg, PA 17108-2023

November 9, 1998

VIA HAND DELIVERY

Charles Bruckner, Director
Bureau of Ride and Measurement Standards
Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

**Re: PROPOSAL WEIGHTS, MEASURES AND STANDARDS
REGULATION -- 28 Pa. B. 5109-5131 (October 10, 1998)**

Dear Mr. Bruckner:

On behalf of the Pennsylvania Propane Gas Association (PPGA), we submit the following comments on the proposed regulations on Weights, Measures and Standards as published in the Pennsylvania Bulletin on October 10, 1998 (28 Pa. B. 5109-5131). Under this proposed regulatory package, the Department of Agriculture ("Department") seeks to implement the provisions of the Consolidated Weights and Measures Act ("Act"), 3 Pa.C.S. §§ 4101-4194. As is pertinent here, section 4110 of the Act authorizes the Department to develop regulations, including regulations for domestic fuel oil under section 4183(b). Although propane is not considered fuel oil within the industry, the proposed regulations appear to add propane services to the fuel oil requirements. Specifically, under this rulmaking proposal, weighing and measuring devices on liquid petroleum gas meters would be regulated. (See § 4.4)

The Pennsylvania Propane Gas Association consists of propane suppliers and distribution companies involving 205 distribution locations in Pennsylvania. PPGA members operate in all 67 counties in Pennsylvania. In 1996, PPGA members sold 245 million gallons of propane, thereby contributing to the state, county and local tax bases. Members provide a valuable and critical energy service to Pennsylvania consumers.

As detailed below, PPGA objects to the proposed regulations regarding metering of domestic fuel oil due to the significant potential fiscal impact and adverse business impact the proposed requirements would impose, directly and indirectly on the proposed industry. The proposed regulations are comprehensive and would broadly regulate the weighing and metering of a myriad of industry sectors. The propane industry is a small specialty fuel supply and

Charles Bruckner, Director

November 9, 1998

Page - 2 -

distribution industry operating in the highly competitive energy field. As drafted, the proposed regulations would have an adverse cost impact on propane companies and consumers throughout the Commonwealth.

PPGA's specific comments and recommendations follow:

1. Cost impact to propane industry and consumers not adequately analyzed. Under Executive Order 1996-1, a cost-benefit analysis is required prior to publication of the proposed regulation. The estimated cost of the units for servicing propane tank meter is \$20,000-25,000/unit. PPGA is concerned that this relatively high up-front cost will discourage private inspectors from becoming certified. As a result, the number of available private sector inspectors will be diminished and may not meet the demand on a timely basis in order to PPGA members to comply with the meter inspection requirements.

Additionally, PPGA is concerned that the costs for the inspection services will rise dramatically. The Department readily admits that these service fees and other related costs (i.e. registration of weighing and measuring devices §§ 7.2(3) and 7.3(a)) are unknown. The Department also recognizes that an unknown cost impact exists given the likely increased number of inspections performed by Certified Examiners of Weights and Measures (CEWMs) or certified UPC/PLU inspectors. Although the program appears to provide these inspections as alternatives to public sector inspections, it remains highly uncertain the availability of private sector inspectors to handle the demand. (See Preamble at 5111.)

Inspection fee amounts are at the discretion of the inspector. As a result, the Department cannot offer a realistic estimate of the total costs involved. (See page 5111). This level of deference to the private inspector is inconsistent with similar programs in other state departments involving the state-directed inspection programs and is an abuse of the discretion by the Department of Agriculture. We note that follow-up Department inspections of certified inspectors is discretionary. § 514(a). Moreover, this lack of oversight is inconsistent with provisions of Executive Order No. 1-1996 regarding cost impacts.

Furthermore, infrequent meter inspections may result from this proposal. Infrequent inspections (14-18 months) will result in additional cost to the propane industry as the meters tend to malfunction at about 14 months from the last inspection by providing more product to the customer than identified by the meter. This unpaid product loss is borne entirely by the propane company.

Finally, these additional costs to the propane industry will result in increased costs to suppliers and consumers. These additional costs have not been evaluated or quantified.

Charles Bruckner, Director
November 9, 1998
Page - 3 -

2. Need for Department meter inspectors and program oversights. PPGA recognizes the Department's authority to delegate inspection responsibility under the Act. 3. Pa.C.S. § 4113. However, the Department has a statutory obligation to ensure that the propane metering is properly administered and that inspections are conducted promptly, efficiently and at a reasonable cost. As such, the Department must ensure that an adequate number of inspectors exist to meet the demands.

3. PPGA program recommendations. PPGA recommends that the Department revise the regulations to include the following:

- Conduct a thorough cost benefit analysis that ensures that sufficient Department inspectors are available to meet the demands until the private inspectors are properly trained and at adequate numbers.
- Amend the regulations to clearly provide propane industry and domestic fuel oil companies the option to use the Department inspection rather than a private inspector.
- Amend the regulations to establish initial fees that can be charged by inspectors to avoid cost gouging, particularly and in the initial program transition to private inspectors where demand may outweigh supply.
- Establish Department review procedures of inspector qualifications to ensure that a systematic and uniform meter inspection program is achieved.

On behalf of PPGA, we submit these comments on the proposed regulations. We look forward to working with you and your staff on developing the final regulations that address our concerns.

Sincerely,



Brian J. Clark

BJC/dmj



NOV 12 1998
 12:00 PM
 TEST COMMISSION

November 6, 1998

Charles M. Bruckner
 Director
 Bureau of Ride and Measurement Standards
 Room 206
 2301 North Cameron Street
 Harrisburg, PA 17110

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Dear Charles,

First, let me apologize for the lateness of this letter and express our appreciation for the opportunity to be invited to comment on this situation.

The proposed regulations, as published on October 10, 1998, while generally concise in their scope, do contain several paragraphs that are open to various interpretations. While we at Precision are absolutely certain that, due to the policy of cooperation that exists between the industry and your office, this would not lead to any immediate problems, it could in the future. Because of these questions regarding some of the wording of the regulations, we would respectfully like to participate in further discussions prior to them being adopted.

Sincerely,

A handwritten signature in cursive script that reads "Billy Cole".

Billy Cole
 PWS Service Manager



NOV 10 1998
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 METRIC COMMISSION

November 6, 1998

Pennsylvania Department of Agriculture
 Bureau of Ride and Measurement Standards
 2301 North Cameron St.
 Harrisburg, Pa 17110

Attn: Charles Bruckner

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Dear Mr. Bruckner,

Thank you for allowing us the opportunity to voice any concerns pertaining to the proposed regulations.

I must say that as an owner of a company which distributes weighing equipment in the Commonwealth and as a citizen of the United States I have reservations as to the entire concept of privatization of any services currently provided by the Weights and Measures officials. I realize this is contrary to the popular notion of smaller government, but I feel that equity in the marketplace and assuring the public that they are receiving a pound of product when they purchase same, should be the responsibility of the government. I say this in spite of the realization that I stand to profit by this proposal. With this proposal the government is ultimately responsible to protect the consumer, but by its nature are tempting the private sector with fraudulent or less then honorable activities.

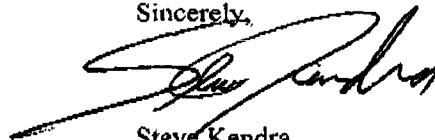
My concerns have taken the form of questions for your consideration. Perhaps the answers would be apparent with a more thorough review of this proposal and or knowledge of the existing Weights and Measures regulations. If so, I apologize, please forgive my ignorance. If, however, any of my questions raise questions in your mind, perhaps they should be considered further.

1. **Reference: (4.12 or 6.3)** How often do we (a company which will hopefully employ several CEWM's) have to have our weights certified by the State Lab?
2. **Reference: (7.1, 7.2 and 10.2)** What constitutes a "commercial weighing device"? What about business to business transactions? Will we now be responsible to seal and notify the Department when servicing or installing scales in which transactions occur business to business? If not, it might be wise to specify that somewhere... ie. counting scales or any scale being used to weigh product for the purpose of transferring ownership of a product from one business to another. Note: Currently less than 5% of our 3.5 million dollar company involves the sale, rental, or service of equipment involving the Department of Weights and Measures. However, interpreting this definition differently, ie. business to business transactions, that percentage would jump dramatically.
3. Can a CEWM take a scale out of service during the inspection formally provided by a W&M official?
4. **Reference: (4.4)** How are you going to handle scales between 1000 lbs and vehicle scales? (For instance a 5000 lb capacity 4 X 4 scale to a scrap dealer might use to buy metal.)

5. **Reference: (4.17)** I understand that this program needs to have teeth and be enforceable. And, with the current sprit of "inform, warn, prosecute" mentality the wording in this section is no problem. However, what if the predecessors to the current administrators don't agree with this philosophy? . . . A good for instance of this is the attitude of the current New Jersey Weights and Measures Department. In other words, what if the administration took the stance of using these fines to generate revenue rather than as a tool to ensure compliance?
6. **Reference (5.2)** I assume it is the duty of the end user or device owner, to comply with the 12 month inspection cycle. Won't there be a tendency to utilize the county W&M for free, instead of paying a CEWM to perform this inspection?
7. **Reference: (5.21). Registration.** Can a large company utilizing multiple scales in their manufacturing process hire or employ its own CEWM? Or in the same vein, can a private company such as a company who sells and services weighing equipment seal or certify its own equipment such as loaners or rental scales?
8. **Reference: (6.2)** Is there any relationship between being registered and being a CEWM? Can one person (technician) have both titles?
9. **Reference: (7.5)** Who's responsibility is it to register equipment under this program? (Seller, or equipment owner)
10. **Reference: (10.6)** It seems from the wording here that Pennsylvania will not accept an NTEP certificate as sufficient evidence of conformance for use in commercial weighing applications. There will be additional approval required by the State. Why?

Mr. Bruckner, I submit these questions with all due respect and I really appreciate the attitude and spirit in which you have undertaken this huge task. I am available, as are any of the employees here at Precision Weight Scale Co., Inc. should you wish to discuss this before or after its enactment.

Sincerely,



Steve Kendra
President, PWS



FAX COVER SHEET

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315 Rickert Road, Sellersville, PA 18960

To: Charles Buckner

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PRECISION WEIGHT SCALE CO., INC.
215-723-9523
11/6/98

MARY BACH

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98 NOV 12 PM 4:27

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REVIEW OF PROVISION

Mr. Charles M. Bruckner
Director
Bureau of Ride and Measurement Standards
Pennsylvania Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110

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November 9, 1998

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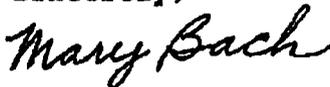
Re: Comments, Proposed Rulemaking, Department of Agriculture, Sandusky
as published in the Pennsylvania Bulletin, Vol. 28, No. 41 Legal
October 10, 1998, pages 5109-5131, specifically Chapter 5,
pages 5116-5120.

Dear Mr. Bruckner,

Enclosed please find my comments on the proposed regulations
for the implementation of Act 155 of 1996. I shall look
forward to any further discussion of these matters.

If there are any questions concerning my comments, please feel
free to call me.

Sincerely,



Mary Bach

Enclosures

cc: Governor Tom Ridge
Senator Roger Madigan
Representative William Lloyd
Representative Joseph Markosek
John H. Rowe, Jr., Legislative Budget and Finance Committee

MARY BACH

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Comments: Proposed Rulemaking
Department of Agriculture
as published in the Pennsylvania Bulletin
Vol.28, No. 41, October 10, 1998, pages 5109-5131,
specifically Chapter 5, pages 5116-5120.

Consumers in Pennsylvania deserve no less than basic consumer protection when it comes to weights and measures issues in the marketplace. Technology has advanced so rapidly that matters of oversight have not kept pace. Act 155 of 1996 includes, for the first time, the inspection of UPC scanning systems and PLU devices as the responsibility of the Department of Agriculture, designated under Weights, Measures and Standards.

Act 155 allows for a qualified private certification program to conduct inspections of UPC scanning systems and PLU devices as an alternative to routine inspections by state or county inspectors. Private certification programs, however, are not actually defined in the Act. The Act does state clearly, though, that "the device or system is inspected at least annually on an unannounced basis." The term "unannounced" inspection implies that no one within the company being inspected should know of the date, time, and/or place of the inspection until the inspector arrives. "Unannounced" means a second party, an objective entity, must be involved. "Unannounced" totally eliminates self-inspection, that is an employee inspecting the employer. Inspectors and/or the programs that provide private certification must be independent of the businesses or corporations they certify. Self-inspection with regard to UPC systems/PLU devices is no more appropriate than gas station owners inspecting and certifying their own pumps.

There are real concerns from the consumer perspective about the lack of definition of "private certification programs" in the regulations and the Department's responsibility of their oversight and monitoring. Simply by omitting specifics, persons are able to make any interpretation they choose, thereby negating the intent of the law___ protection of consumers from electronic overcharges (electronic shopperlifting) and recourse in oversight.

Section 5.1 Purpose (1) refers to 4112(d) of the Act. The copies of Act 155 of 1996 and Senate Bill 509, printer's No. 2452 from which the Act is taken, show no item numbered 4112(d).

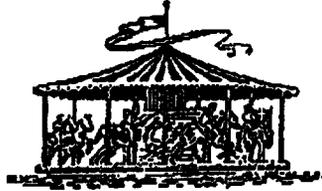
Mary Bach
Comments: Proposed Rulemaking
Page 2

While there are specifics with regard to suspending or revoking the certification of a UPC/PLU inspector's certificate for violations of the inspection rules, there are no policies or procedures about how Section 5.15 would be monitored by the Department. Section 5.15(5) refers to Section 5.14(a) which states "the Department may evaluate...". Section 5.15(a) also states "the Department may suspend...". The word shall must be used.

There is nothing in the regulations stating how the general public will be made aware of the inspected or certified status of a retailer's UPC scanning system or PLU device. All stores are required to have been inspected prior to June 30, 1999, and then at least yearly afterward. Customers of an establishment deserve to know when the store was inspected and by whom. A seal, certificate, or decal should be prominently displayed for the customers' benefit and assurance.

Many other states have demonstrated by their legislated actions the fact that effective oversight of UPC scanning systems and PLU devices is a needed consumer protection. There should be enforceable oversight with specific penalties. We shouldn't pretend that electronic overcharging doesn't exist in Pennsylvania. The Act, the loopholes, and the approach of the Department do not seem to create a system that instills in the merchant a responsibility to maintain pricing accuracy, nor does it empower the consumer with a sense that Pennsylvania cares about them. The direction of our state, manifested in these regulations, is the protection of businesses, to the detriment of consumers.

Mary Bach
Mary Bach



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF RIDE AND MEASUREMENT STANDARDS

DATE: November 12, 1998
TO: Mr John Hansota
FAX: 717-783-2664
RE: Oct 15.5
SENDER: Charles M. Bruckner

YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL.

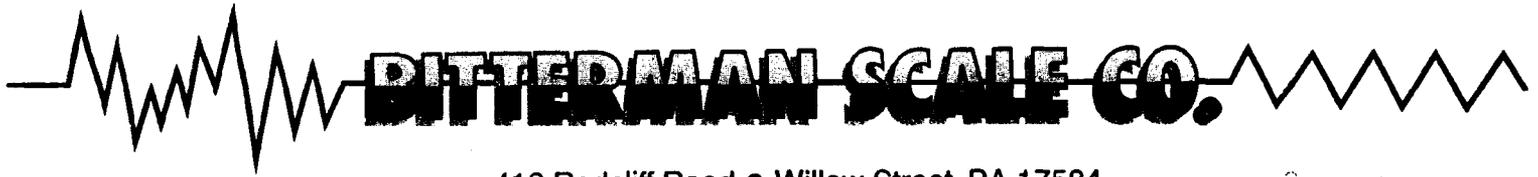
COMMENTS:

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PA. DEPT. OF AGRICULTURE

Room 206
2301 North Cameron St.
Harrisburg, PA 17110-9408

Amusement Rides & Attractions:
Weights and Measures:
FAX: 717-783-4158

Tel. 717-787-2291
Tel. 717-787-9089



413 Radcliff Road • Willow Street, PA 17584
Phone: 717-464-5678 • FAX: 717-464-3008

November 4, 1998

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Mr. Charles M. Bruckner
Department of Agriculture
Bureau of Ride & Measurement Standards
2301 North Cameron Street
Harrisburg, PA 17110

Dear Mr. Bruckner,

We would like to address the following concerns regarding Proposed regulations for ACT 155/1996 for Weights, Measures and Standards.

It is very important that as one reviews the proposed rules and regulations for Weights, Measures and Standards that NIST Handbook 44 is the standard that must be met by the following: Department of Agriculture, Bureau of Weights and Measures, the new position of CEWM's, Sellers, Installers and Repairers.

It is also very important that as one reviews these regulations to consider the Department of Transportation and the regulations that are required for motor vehicles inspection. It is our understanding that the approved inspection facility has a specific guideline for inspection of a vehicle and a specific form to complete and follow before an inspection seal can be applied to a vehicle. Every inspection station must follow the same guidelines and regulations.

Please note in the ACT 155 regulations that nowhere are NIST Handbook 44 guidelines set forth by the Department of Agriculture for the Bureau of Weights and Measurements, the CEWM's, Sellers, Installers, and Repairers. In fact, the guidelines proposed are very subjective to allow anyone to interpret the Handbook 44 regulations as they desire. Please remember that all of us have the ability to interpret any given set of rules or regulations to meet our own understanding. The most important set of guidelines that is needed to eliminate confusion between all parties is missing from these regulations. This allows any of the parties to operate per their own understanding and very little will be uniform in this program and may cause it to fail.

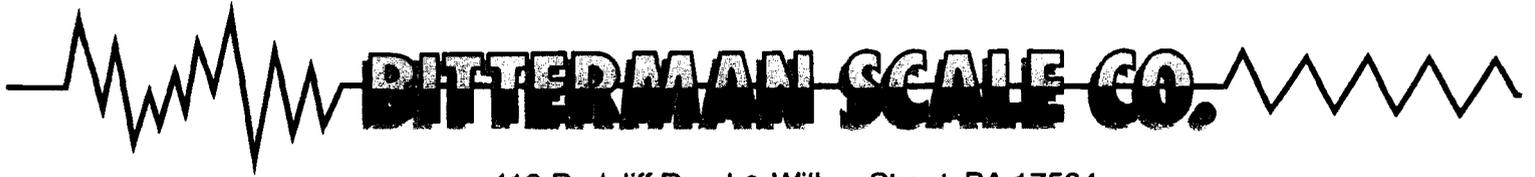
Note Section 4.12 Testing and inspection performance standards.

Where and what are these NIST standards that the department has adopted as applicable. These testing and inspection performance standards must be cited somewhere.

Note Section 4.13 Reporting procedure's for CEWM's.

- (b) The CEWM's can make up their own form or use a sample form from the department. There should be one form that is standard for all CEWM's, state inspectors, sellers, installers and repairers as set forth by the department.
- (c)(7) This is very subjective and what one sees as defects or deficiencies may not be considered as defects by others.
- (c)(8) This is also very subjective and where one may think a scale is in compliance, another may see it as out of compliance. It all depends on how each one interprets the standards to do the test. This testing for compliance must be done the same way by all parties.

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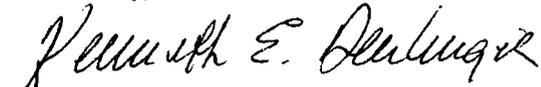
Page 2
Department of Agriculture
Mr. Charles Bruckner

It is imperative that all who want to sell, inspect, install, repair and place into service devices with the Commonwealth be treated equally and follow the exact same procedures, regulations and detail reporting as outlined by Handbook 44 and to be required by ACT 155.

Attached is a listing of concerns that we requested to be addressed in past proposals. To date we have not seen any of these concerns changed in the latest Proposed Regulations. We hope that these will be considered to make ACT 155 successful for the State, The Weighing Industry and Consumer. We would also be delighted to visit and discuss these concerns with the parties who are responsible to make improvements to the proposed regulations.

We thank you for considering these most serious matters.

Sincerely,


Kenneth E. Denlinger

KED:cg

The following is a list of concerns that we believe should be addressed or changed.

CHAPTER 4

4.3 Itemized listing of types and sizes is missing: All medium capacity 1000 lb to vehicle scales and "On Board" weighing systems mounted on vehicles. Also missing any reference to timed devices, printers, computers, event loggers or audit trail mechanisms, etc.

A "report" received describing the scale and its condition must be comprehensive and all persons, state employees or CEWM's, performing these tests, must perform identical tests.

4.13.A,B,C Things such as: Pit condition, strain load test, repeatability, RFI, Bi-directional test, missing security seal, over capacity use, decreasing load readings must be important enough to report.

4.15 Wasn't the original intent to have a board comprised of members of industry who understand the scale industry, other "neutral" parties who have no vested interest in decisions that all be made and representation from the Bureau?

Can a request be denied?

What does board do? Define duties, authority, etc.

Who can you appeal to if you disagree with the Board?

4.15.A.3 There are scales being tested now by state inspectors that we fail or should fail, and have for years been passed. This points out to us that a very specific test must be determined, it should be detailed, and followed by all.

CHAPTER 6

6.7 This paragraph explains and requires that a registered person must have and submit verification from the lab for their weights. If so, a seller must have and verify their weights which contradicts 6.3.A.

Questions:

1. What does a registered company have to do with personal registration?

2. Is the firm registered and/or is the employee? It seems an employee can have ability to pass a test and yet not be able to do an adequate job - lacking equipment that is deemed proper by the Bureau. How is this addressed?

CHAPTER 7

Why is this needed, if all need to register and all registered need verification of standards can't we delete this?

7.1 Should include in list: Weighing, measuring, timing, UPC and PLU devices, etc. This complete list should follow through the entire document of regulations.

7.3 How will the device owner find out they must register?
We believe the state should make public this requirement by newspapers, TV, radio, etc., with the reference to penalty for non-compliance. How and why should we in industry try to compete to do this?

CHAPTER 9

9.5.B.4 How is the owner or worse yet the weighmaster going to know this?

9.10.B.7 Is this stating no more weighing in tons? Why not?

9.10.B.7 Delete or describe

9.10.D Must this be labeled as such.....Why? What about all existing tickets, must they be discarded?

9.11.A Gender should be he or she, not only here, but through out.

9.11.B How do weighmasters know this? Also for mail order warehouses etc., they must know and are required to only sell in accordance type, amount, kind and it has been tested and approved preceding use, meaning the department has received a test results report and has agreed its okay to put into service. We don't see that being reality.

9.11.C How crucial is it that every certificate be in numeric order? Exactly?

9.11.F What do you mean? "...that clearly shows what weights were actually determined."

Does this state that the ticket/certificate must state when that particular tare weight that was pulled from memory, show the date it was entered in the computer?

Also, what is stated is that the certificate shall show that the truck was weighed on a particular scale. What if the location has 2,3,4,5 or more scales? Does each scale need to be listed if the exact one is not known?

9.11.G Someone explain this all to us.

What happens when feed or coal cannot all be delivered: 5 ton was ordered only 7600 lb was left at the delivery site, the rest did not fit. By the way, how was it determined what was delivered if it happened for two different types of products at two locations on one truck load? How do you document all that?

9.11.H How does the device owner know he must keep this for two years?

CHAPTER 10

10.2 What is the prosecution for this? How do engineering firms get the message that they can no longer manufacture scales and expect to sell their homemade scales in Pennsylvania?

What do we do for existing homemade scales?

What do we do if the state has already stickered a scale that has no C. OF C.?

10.3 Who makes the judgment callout in the field, when determining what is "reasonably permanent"?

Is this saying that I can make homemade levers, sell non-NTEP equipment, sell and make one of a kind devices as long as "it is reasonably permanent"? This is a double standard and must be rewritten to eliminate "anything goes if it turns out okay".

10.6.D Does the department require all pertinent information such as Meter C. of C., Loadcell C. of C., Levers C. of C., Base C. of C., Model C. of C., etc. In other words: The person in the Bureau office making the "complete review" must know all the information prior to approving the device the first time or it will be hard to unapprove a device that slipped thru the cracks.

Also the department will approve a type of weighing...described in 10.3 and 10.5. These contradict themselves. The sentence ending with 10.5 must be deleted or changed to just include 10.5.

10.10.A This seems to indicate that the lab will conduct a test that would take the place of a NIST or NCWM test and allow commercial use, bypassing the normal NTEP test which costs in excess of \$10,000.00. If the Bureau is implying the lab will do a test that replaces the usual procedure, it is unfair. I would also wonder how the lab is going to produce temperature testing etc. that normal, new devices go through.

Additional thoughts:

What about event counters?

When placing a seal on a scale for approval rejection and condemnation, who provides them, if CEWM's do, are they all going to be different?

Please define when to use a condemnation seal, I have seen some terrible scales with only rejected stickers/tags on them. In fact, it has been 20 years since I saw a yellow tag. How can this be? If no scale for 20 years has ever found that bad by the state inspectors, why would CEWM's have to have them?

Can the wording be changed concerning annual weight certification to allow for the weights "to be checked within each calendar year" which allows ease of scheduling with approved lab work.

Are applicants required to pass a Pennsylvania test as well as paying the fee for our registration, if they are out of state?

Question: If there is no one doing any work on a device now, how will they know to get the device checked? The state should notify the device owner of the need and then he can choose.

How will it be determined that the CEWM is doing a faulty job? Or is the device owner "playing games"? It seems to me that the way the system is proposed, the preponderance of evidence appears against the CEWM, not the device owner or the weighmaster. Is it fair that we are charged, licensed monitored, have to report monthly, etc., etc., and then "considered more as guilty" than the owner or user?

When we are found guilty by an "administrative hearing", who makes up the hearing personnel? It should be as described in the 4.15 proposed changes.

How will these regulations all be enforced? We don't want more laws that regulate the good people and the offenders still get away with whatever they can due to not having teeth in the system. We would like the Bureau to explain this.

Who checks up on rejected/condemned scales to see if the customer is "obeying" the rules? He will not pay me to come back and check.

How often is device registration really needed? Could it be every other year?

Do we all understand each cost we as CEWM's will incur? The list as I understand it includes:

- A. 1.2 Maintenance of Standards
- B. 1.3 License
- C. 1.5c Decals
- D. 5.1 Training
- E. 5.1/3.2 Testing
- F. 6.1 Inspection Forms
- G. 6.2 Report Forms
- H. 6.2 Computer/Modem/Postage
- I. 7.1 More Standards?? Possibly
- J. Pay raise to inspectors
- K. Administration costs
- L. Software Development
- M. Computer and Maintenance



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November 4, 1998

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Fleming Retail Services

Samuel E. Hayes, Jr.
Secretary
PA Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110-9408

Dear Secretary Hayes:

We write to you on behalf of the Scanning Certification Program Board of Advisors concerning the proposed Act 155 regulations that were published in the Pennsylvania Bulletin on October 10, 1998.

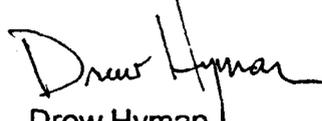
The Scanning Certification Program is an independent price verification private certification program. The Board is a broad-based group of industry, consumer, labor, government and community representatives from across the state. This letter thus represents the input of a wide spectrum of interests related to this important issue.

The proposed regulations permit "self-inspection"--which we strongly oppose because self-inspection: (1) allows certified UPC/PLU inspectors to be employees or for-profit contractors of the companies being inspected and (2) enables companies subject to Act 155 inspections to create their own private certification programs for the purpose of inspecting themselves.

How can inspections be unannounced or unbiased if companies are permitted to conduct their own price verification inspections? Self-inspection is contrary to consumer protection, a primary intent of Act 155. We urge you to reconsider the issue of self-inspection and require private certification programs to be government or other independent not-for-profit entities, not an individual or group that has a direct tie or is otherwise financially tied to the company being inspected.

Thank you for taking the time to consider our recommendation.

Sincerely,


Drew Hyman
Chairman


Mary Bach
Vice Chairman


Murray Battleman
Treasurer

cc: Dwight-Jared Smith, Assistant Counsel, PA Department of
Agriculture
Charles M. Bruckner, Director, Bureau of Ride & Measurement
Standards



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PRESIDENT
David L. McCorkle

Date: November 6, 1998
To: Charles Bruckner
From: Jennifer Frye
RE: Weights and Measures Proposed Regulations

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In response to the Proposed Rulemaking for the Department of Agriculture's Weights, Measures and Standards Act (as published in the October 10, 1998 issue of the *PA Bulletin*), I have solicited comments from members of the PA Food Merchants Association and PA Convenience Store Council.

Due to the fact that no substantive comments were received, PFMA and PCSC will not be submitting comments for your review.

Thank you for time. We look forward to working with you in the future.

PCSC Officers

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Crossroads Food Marts
Belle Vernon, PA

/jlf

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