

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[70 PA. CODE CHS. 1—10, 21, 35 AND 39]

Weights, Measures and Standards

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

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

Authority

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

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

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

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

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

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

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

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

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

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

Need for the Proposed Amendments

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

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

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

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

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

Summary of the Proposed Amendments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Persons Likely to be Affected

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

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

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

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

Fiscal Impact

Commonwealth

The proposed amendments would have some fiscal impact upon the Commonwealth. The Department will require additional personnel to assist it in administering the certification, registration, inspection and enforcement provisions of the act. Although the need for these additional employees is driven by the act, rather than the proposed amendments, the Department estimates it will need 2 additional office personnel, at an estimated total cost of \$100,000 per year, to meet this obligation. The Department may also require additional field personnel, but is not certain whether this will be necessary. The need for additional field personnel will depend on the extent to which county sealers, city sealers, CEWMs and

private certification programs perform inspections the Department would otherwise be required to perform under the act.

Political Subdivisions

The proposed amendments will not impose appreciable costs upon political subdivisions. Although a county or city that agrees to perform required inspections under a memorandum of understanding with the Department must ensure that its county sealers or city sealers are adequately trained and certified to inspect the types of weights and measures they intend to inspect, this training is not expected to be costly. The Department will offer training for free or at cost to the extent practicable.

Private Sector

The proposed amendments might result in some cost to those persons who seek to become a CEWM or a certified UPC/PLU inspectors but have not taken the training the proposed amendments would require.

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

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

General Public

The proposed amendments will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

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

Regulatory Review

The Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on September 29, 1998, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed amendments, it must so notify the Department within 10 days of the close of the Committees' review period.

The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed amendments.

Public Comment Period

The public comment period with respect to the proposed amendments shall be 30 days from the date of publication of these proposed amendments in the *Pennsylvania Bulletin*.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Ride and Measurement Standards, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Charles Bruckner, Director, (717) 787-9089.

Annotated Copy

The Department will provide an unofficial annotated copy of Annex A upon request. This annotated copy contains numerous footnotes and may provide useful background information to potential commentators.

Sunset/Expiration Date

Although the proposed amendments will have no sunset date, their efficacy would be reviewed on an ongoing basis.

Effective Date

The proposed amendments will take effect on the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-11. (1) General Fund; (2) Implementing Year 1998-99 is \$100,000; (3) 1st Succeeding Year 1999-00 is \$103,000; 2nd Succeeding Year 2000-01 is \$106,000; 3rd Succeeding Year 2001-02 is \$109,000; 4th Succeeding Year 2002-03 is \$113,000; 5th Succeeding Year 2003-04 is \$116,000; (4) Fiscal Year 1997-98 \$1,622,000; Fiscal Year 1996-97 \$1,337,000; Fiscal Year 1995-96 \$1,439,000; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

PART I. [WEIGHMASTERS] GENERAL

(Editor's Note: As part of this proposed rulemaking, the Department proposes to delete the text of Chapters 1 and 3 which currently appear at 70 Pa. Code pages 1-1—1-8, serial pages (244723)—(244730) and 3-1—3-4, serial pages (244731)—(244734).)

CHAPTER 1. (Reserved)

- § 1.1. (Reserved).
- §§ 1.11—1.14. (Reserved).
- § 1.21. (Reserved).
- §§ 1.31—1.33. (Reserved).
- § 1.41. (Reserved).

(Editor's Note: Chapters 2—10 are proposed to be added. The text has been printed in regular type to enhance readability.)

CHAPTER 2. GENERAL PROVISIONS

- Sec. 2.1. Definitions.
- 2.2. Contacting the Department.

§ 2.1. Definitions.

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

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

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

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

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

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

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

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

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

Commercial feed facility—Each separate mill or plant, whether fixed or mobile, or distributor of commercial feed or customer-formula feed, as those terms are defined in sections 5101—5115 of the act (relating to commercial feed act).

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

Department—The Department of Agriculture of the Commonwealth.

Director—The Director of the Bureau.

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

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

Food Act—31 P. S. §§ 20.1—20.18.

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

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

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

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

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

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

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

NCWM—The National Conference on Weights and Measures.

NIST—The National Institute of Standards and Technology.

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

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

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

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

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

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

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

Public eating and drinking place—A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge, or a place which otherwise conforms to the definition in section 1 of the Public Eating and Drinking Place Law (35 P. S. § 655.1). The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Public Eating and Drinking Place Law—The act of May 23, 1945 (P. L. 926, No. 369) (35 P. S. §§ 655.1—655.13).

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

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

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

Secretary—The Secretary of the Department.

Sell or sale—Barter and exchange.

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

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

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

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

UPC scanning system—A UPC scanning system.

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

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

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

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

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

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

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

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

§ 2.2. Contacting the Department.

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

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

CHAPTER 3. (Reserved)

§ 3.1. (Reserved).

§ 3.2. (Reserved).

§§ 3.11—3.14. (Reserved).

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

Sec.	
4.1.	Purpose.
4.2.	CEWM.
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 CEWM.
4.14.	Inspection and testing by the Department.
4.15.	Suspension or revocation of certification.
4.16.	CEWM list.
4.17.	Civil penalties.

§ 4.1. Purpose.

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

§ 4.2. CEWM.

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

§ 4.3. Authority of a CEWM.

(a) *General.* A CEWM may perform the annual testing and inspection of any weighing or measuring device which the Department is required to perform under section 4112(b) of the act (relating to general testing and inspections), and with respect to which the CEWM is certified. These weighing and measuring devices consist of commercially used small capacity retail computing scales, retail package shipping scales, vehicle scales, small platform scales which weigh items to 1,000 pounds, truck-mounted fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers. The Department may accept the report of a CEWM as sufficient to meet these statutory testing and inspection requirements.

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

§ 4.4. Categories and types of weighing or measuring devices.

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

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

§ 4.5. Certification standards.

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

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

§ 4.6. Training courses.

(a) *General approval of NIST training courses.* A training course now or hereafter prescribed by NIST and approved by the Department for a particular category or type of measuring or weighing device is hereby designated an appropriate training course for the subject category or type of weighing or measuring device. The Department will grant its approval of a training course prescribed by NIST by either including it on the list set in subsection (b) or by adding it to the list by publication in accordance with subsection (c).

(b) *List of current approved NIST training courses.* The current NIST training courses and the category or type of

weighing or measuring device with respect to which each is approved are as follows:

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

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

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

§ 4.7. Audit by Department.

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

§ 4.8. Applying for certification.

(a) *Application required.* A person who has successfully completed a training course prescribed by NIST and approved by the Department in accordance with § 4.6 (relating to training courses) may apply to the Department for a CEWM certificate. Certification is granted through issuance of the certificate described in § 4.9 (relating to CEWM certificate).

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

(1) The name and mailing address of the person seeking a certificate.

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

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

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

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

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

(7) The date of the application.

(8) Other information the Department might reasonably require.

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

§ 4.9. CEWM certificate.

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

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

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

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

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

(4) A unique identification number.

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

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

(7) Other information the Department might reasonably include.

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

(d) *Obligation to produce CEWM certificate for inspection.* A CEWM shall have the CEWM certificate with him

whenever performing inspections or tests under authority of that certificate, and shall produce the certificate for inspection upon demand by the Department or a person on whose behalf the CEWM is performing the inspection or test.

§ 4.10. Expiration of CEWM certificate.

A CEWM certificate will expire no greater than 3 years from the date it is issued.

§ 4.11. Obtaining a new CEWM certificate.

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

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

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

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

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

§ 4.12. Testing and inspection performance standards.

The Department has adopted the applicable NIST standards as its testing and inspection performance standards.

§ 4.13. Reporting procedures for CEWM.

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

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

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

(1) The printed name of the CEWM.

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

(3) The date of the inspection.

(4) The location of the inspection.

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

(6) The manufacturer, model and serial number of each device inspected.

(7) A description of any defects or deficiencies in the weighing or measuring device inspected, and whether they have been repaired or rectified.

(8) A statement of whether the weighing or measuring device is in compliance with NIST performance standards.

(9) The signature of the CEWM.

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

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

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

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

§ 4.14. Inspection and testing by the Department.

(a) *Random inspection and testing.* In accordance with section 4110 of the act (relating to specific powers and duties of department; regulations), the Department will conduct random inspection and testing of a sample of devices that have been inspected and tested by a CEWM to determine whether the CEWM conducted the inspection and testing in accordance with the act and this chapter.

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

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

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

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

§ 4.15. Suspension or revocation of certification.

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

- (1) Violates a provision of this chapter.
- (2) Violates a provision of the act.
- (3) Violates an applicable NIST standard, unless that standard is inconsistent with the act or this chapter.

(4) Intentionally or fraudulently reports inaccurate information on an inspection report form.

(5) Is found, following inspection and testing by the Department in accordance with § 4.14 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed testing and inspections of the category or type of weighing or measuring device with respect to which the certificate was issued.

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

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

§ 4.16. CEWM list.

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

- (1) The name and address.
- (2) The telephone number.
- (3) The facsimile number (if available).
- (4) Each category or type of weighing or measuring device with respect to which the CEWM is certified.
- (5) The expiration date of certification.
- (6) The unique identification number of the CEWM's certificate.

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

§ 4.17. Civil penalties.

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

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

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

CHAPTER 5. UPC SCANNING SYSTEMS AND PLU DEVICES

GENERAL

Sec.	
5.1.	Purpose.
5.2.	Requirement of annual testing and inspection.
5.3.	Testing and inspection standards.
5.4.	Certified UPC/PLU inspector.
5.5.	Authority of Certified UPC/PLU inspector
5.6.	Certification requirements.
5.7.	Training courses.
5.8.	Applying for certification.
5.9.	UPC/PLU inspector's certificate.
5.10.	Expiration of UPC/PLU inspector's certificate.
5.11.	Obtaining a new UPC/PLU inspector's certificate.

- 5.12. Inspections: reporting procedures.
- 5.13. Inspections: enforcement levels.
- 5.14. Inspection and testing by the Department.
- 5.15. Suspension or revocation of certification.
- 5.16. Certified UPC/PLU inspector list.

PRIVATE CERTIFICATION PROGRAMS

- 5.21. Registration.
- 5.22. Requirements and fees.
- 5.23. Program list.

§ 5.1. Purpose.

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

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

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

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

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

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

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

§ 5.2. Requirement of annual testing and inspection.

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

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

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

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

(2) The inspection is unannounced.

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

(4) The private certification program has registered with the Department in accordance with § 5.17 (relating to private certification programs: registration).

(5) The certified UPC/PLU inspector conducting the inspection on behalf of the private certification program files a price verification inspection report with the Department in accordance with the procedure described in § 5.12 (relating to inspections: reporting procedures).

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

§ 5.3. Testing and inspection standards.

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

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

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

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

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

§ 5.4. Certified UPC/PLU inspector.

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

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

(a) *General.* A certified UPC/PLU inspector is qualified to perform the annual testing and inspection of any commercially used UPC scanning system or PLU device which is required under section 4112(c) of the act (relating to general testing and inspections).

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

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

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

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

(c) *Fees.* A certified UPC/PLU inspector may not charge a fee for inspection and testing services, unless that person is acting as part of a private certification program.

§ 5.6. Certification requirements.

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

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

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

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

§ 5.7. Training courses.

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

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

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

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

§ 5.8. Applying for certification.

(a) *Application required.* A person who has successfully completed an approved training course (as described in § 5.7 (relating to training courses)) within 2 years of the date of application may apply to be certified as a UPC/PLU inspector. Certification is granted through issuance of the certificate described at § 5.9 (relating to UPC/PLU inspector's certificate).

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

(1) The name and mailing address of the person seeking a UPC/PLU inspector's certificate.

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

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

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

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

(6) The date of the application.

(7) Other information the Department might reasonably require.

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

§ 5.9. UPC/PLU inspector's certificate.

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

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

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

(2) The expiration date of the certificate, which, in accordance with § 5.10 (relating to expiration of UPC/PLU inspector's certificate), shall be 3 years from the date of issuance.

(3) A unique identification number.

(4) A photograph of the person to whom the certificate is issued.

(5) A statement that the Department has determined the person identified on the certificate to be a "Certified UPC/PLU inspector" in accordance with section 4112 of the act (relating to general testing and inspections).

(6) Other information the Department might reasonably include.

(c) *Ownership of UPC/PLU inspector's certificate.* A certificate issued by the Department will remain the property of the Department. A certified UPC/PLU inspector or other person having physical possession of a

certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

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

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

A UPC/PLU inspector's certificate will expire 3 years from the date it is issued.

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

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

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

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

§ 5.12. Inspections: reporting procedures.

(a) *Inspection report form required.* A certified UPC/PLU inspector shall prepare and submit to the Bureau a price verification inspection report form with respect to any inspection the certified UPC/PLU inspector conducts. A copy of this price verification inspection form is set forth in Appendix A. The form is substantively identical to the "Appendix A Model Form—Price Verification Report" form set forth in the NCWM's Examination Procedure for Price Verification.

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

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

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

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

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

§ 5.13. Inspections: enforcement levels.

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

§ 5.14. Inspection and testing by the Department.

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

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

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

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

§ 5.15. Suspension or revocation of certification.

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

(1) Violates any provision of this chapter.

(2) Violates any provision of the act.

(3) Violates an applicable standard prescribed by NCWM's Examination Procedure for Price Verification, unless that standard is inconsistent with the act or this chapter.

(4) Intentionally or fraudulently reports inaccurate information on a price verification inspection report form.

(5) Is found, following inspection and testing by the Department in accordance with § 5.14 (relating to inspection and testing by the Department), to have inaccurately, improperly or incompetently performed an inspection of a UPC scanning system or PLU device.

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

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

§ 5.16. Certified UPC/PLU inspector list.

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

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

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

PRIVATE CERTIFICATION PROGRAMS

§ 5.21. Registration.

(a) *General requirement.* A person who owns or operates a commercially used UPC scanning system or PLU device may avoid the requirement of annual State or local inspection described in section 4112(c) of the act (relating to general testing and inspections) by having the inspection performed by a private certification program. A private certification program shall meet the requirements of this chapter and shall, prior to commencing testing and inspection of commercially used UPC scanning systems or PLU devices, file a written statement with the Department, at the address in § 2.2 (relating to contacting the Department).

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

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

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

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

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

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

§ 5.22. Private certification programs: Requirements and fees.

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

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

§ 5.23. Program list.

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

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

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

Page ___ of ___

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

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

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

Comments/Remarks:

Evaluation of Results:

Report Acknowledgement

___ Sample- ___ Not on File= ___ Adjusted Sample

Name/Title _____

___ Errors+ ___ Adjusted Sample= ___ Error in %

Inspector _____ Time In: _____
 Time Out: _____

Accuracy ___ % Ratio: ___ Overcharges ___ Undercharges

Reinspection will be made within 30 days.

Original white - Bureau copy

Pink - Inspector's copy

Yellow - Company copy

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

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

§ 6.1. Purpose.

This chapter establishes the program referenced in section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices), under which persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices shall register with the Department, maintain field standards that adequately test weighing and measuring devices being placed into commercial service and provide the Department notice of newly-installed commercial weighing and measuring devices.

§ 6.2. Registration requirement.

(a) *General registration requirement.* A person who is engaged in the business of selling, installing, servicing or repairing commercially used weighing and measuring devices shall maintain a current registration with the Department, as described in § 6.4 (relating to registration procedure).

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

§ 6.3. Field standards.

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

(b) *Adequate field standards.* For purposes of this chapter, field standards will not be considered adequate for use in placing commercially used weighing and measuring devices into service unless there exists a current verification of accuracy issued by the State Metrology Laboratory with respect to those field standards. This verification of accuracy may take the form of a "Report of Test for Weights and Measures Standards" or a similar document.

§ 6.4. Registration procedure.

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

(b) *Registration form.* A person seeking to register with the Department under this chapter may obtain a registration form from the Department at the address in § 2.2

(relating to contacting the Department). The prospective registrant shall complete the form and return it to that same address. The registration form shall require the following information:

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

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

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

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

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

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

(7) The date of the application.

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

(9) Other information the Department might reasonably require.

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

§ 6.5. Registration card.

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

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

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

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

(3) The effective date of registration.

(4) The maximum expiration date of the registration, which, in accordance with § 6.6 (relating to expiration/renewal of registration), is 3 years from the date of registration.

(5) A unique identification number.

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

(7) A statement that the person identified on the registration card has registered with the Department in

accordance with section 4113 of the act (relating to registration of sellers, installers and repairers of weighing and measuring devices).

(8) Other information the Department might reasonably include.

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

(d) *Obligation to produce registration card for inspection.* A registrant under this chapter shall have the registration card with him whenever selling, installing, servicing or repairing a commercially used weighing or measuring device.

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

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

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

- (1) The location of the newly-installed or repaired device, the date of the installation or repair and a statement of whether the device is a newly-installed device or a repaired device.
- (2) The manufacturer's name or brand name.
- (3) The model number listed on the device.
- (4) The capacity of the device, if applicable.
- (5) The serial number of the device.
- (6) The category or type of weighing or measuring device to which the newly-installed or repaired device belongs.
- (7) The name and telephone number of a contact person through which the Department, a county sealer or a city sealer may arrange an inspection of the device.

(c) *Responsibilities of inspector.*

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

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

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

§ 6.7. Expiration/renewal of registration.

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

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

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

§ 7.1. Purpose.

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

§ 7.2. Weighing and measuring devices affected.

The requirements of this chapter apply to the following:

- (1) Weights and measures used in determining the weight, measurement or count of commodities or things sold, offered or exposed for sale on the basis of weight, measure or count.
- (2) Weights and measures used in computing the basic charge for services rendered on the basis of weight, measure or count or of devices used to dispense services on time.

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

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

§ 7.3. Requirement: registration of devices by owners.

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

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

§ 7.4. Report by inspectors.

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

- (1) A summary of the work performed.
- (2) A description of the weights, measures and weighing and measuring devices inspected or tested, and the results of the inspection or test.
- (3) A description of the nature and result of all criminal prosecutions of violations of the act or this chapter.

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

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

§ 7.5. Registration process.

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

(b) *Required information.*

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

- (i) The name and address of the person registering the device.
- (ii) The location of the device.
- (iii) The manufacturer's name or brand name.
- (iv) The model number listed on the device.
- (v) The capacity of the device, if applicable.
- (vi) The serial number of the device.
- (vii) The category or type of weighing or measuring device to which the newly-installed device belongs.

(2) *Exception.* If the weighing or measuring device being registered is a UPC scanning system or PLU

device, the registrant may provide the information required under paragraph (1)(i) and (ii), and provide a general description of the various components of the system or device rather than the information required under paragraphs (1)(iii)—(vii).

(c) *Time for filing the form.*

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

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

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

(4) *Commercial feed facilities.* A commercial feed facility shall register its weighing and measuring devices at the time it submits its annual license fee under section 5103 of the act (relating to licensing).

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

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

CHAPTER 8. TRAINING PROGRAM FOR INSPECTORS AND SEALERS

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

§ 8.1. Purpose.

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

§ 8.2. General adoption of NIST training program.

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

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

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

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

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

(2) *Types of weights and measures listed in § 4.4.* A State inspector, county sealer or city sealer shall successfully complete the applicable training course in § 4.6(b) (relating to training courses), or any updated list published in accordance with § 4.6(c), as a prerequisite to inspecting or testing any of the categories and types of weighing and measuring devices in § 4.4 (relating to categories and types of weighing and measuring devices) for purposes of the act.

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

§ 8.4. Prior training.

A State inspector, county sealer or city sealer who has successfully completed a NIST training course prior to ____ (*Editor's Note:* The blank refers to the effective date of adoption of this chapter.), and who has continued to work as a State inspector, county sealer or city sealer since completing the course, shall be deemed to have met the minimum training requirements of this chapter with respect to any category or type of weighing and measuring device addressed in that NIST training course.

§ 8.5. Supplemental or refresher training.

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

CHAPTER 9. WEIGHMASTERS

GENERAL

Sec.	Purpose.
9.1.	Definitions.
9.2.	License required.
9.3.	Qualifications.
9.4.	Application for a public weighmaster's license.
9.5.	Term of license; subsequent licenses.
9.6.	Format of a public weighmaster's license.
9.7.	Display of license required.
9.8.	Commodities sold by weight.
9.9.	Weighmaster's certificate.
9.10.	

- 9.11. Issuing a public weighmaster's certificate.
- 9.12. Retention and inspection of certificates.

SOLID FUEL

- 9.13. Weighmaster's certificate required.
- 9.14. Sales by employer-producer to employes.
- 9.15. Certificate affecting weighing
- 9.16. Limitations of certificate for anthracite.
- 9.17. Responsibilities of weighmasters and shippers.
- 9.18. Certificate of special transportation.
- 9.19. Issuance of weighmaster certificates with respect to mine track scales and tippie scales.
- 9.20. Reweighing and issuance of certificates.
- 9.21. Reciprocity with New York.

§ 9.1. Purpose.

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

§ 9.2. Definitions.

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

Gross weight—Total weight of vehicle and load.

Net weight—Gross weight less tare weight.

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

Tare weight—The actual weight of only the vehicle.

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

§ 9.3. License required.

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

§ 9.4. Qualifications.

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

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

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

§ 9.5. Application for public weighmaster's license.

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

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

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

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

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

(4) Verification that the scales referenced in paragraph (3) belong to a type of weighing device approved by the Bureau in accordance with Chapter 10 (relating to device type approval) and approved by a weights and measures officer of the Commonwealth for use as of the date of application.

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

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

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

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

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

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

§ 9.6. Term of license; subsequent licenses.

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

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

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

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

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

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

(2) A unique license number assigned to the public weighmaster.

(3) The name and address of the business for which the licensed public weighmaster conducts public weighing.

(4) The location of the scales where the licensed public weighmaster conducts public weighing.

(5) The date the license was issued.

(6) The date the license will expire.

(7) Other information the Department deems reasonable.

§ 9.8. Display of license required.

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

§ 9.9. Commodities sold by weight.

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

(1) The scales are suitable for weighing the tare and gross weight of the vehicle or vehicle and trailer transporting the commodity.

(2) The scales are located within this Commonwealth.

(3) The scales are of a type approved by the Department in accordance with Subchapter D of the act (relating to device type approval) and Chapter 10 (relating to device type approval).

(4) The scales measure weights of greater than 1,000 pounds.

§ 9.10. Weighmaster's certificate.

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

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

(1) The kind and size of the commodity.

(2) The name and address of the seller.

(3) The name and address of the purchaser.

(4) The license number of the vehicle and trailer, or other means of permanent identification.

(5) The signature and license number of the licensed public weighmaster who weighed the commodity and who issued the weighmaster's certificate.

(6) The date and hour when weighed.

(7) The gross weight in avoirdupois pounds of the vehicle and the load, the tare weight and net weight of the commodity, and, where the load is divided into lots, the net weight of each lot.

(8) A sequential serial number.

(9) Other relevant information the licensed public weighmaster deems necessary.

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

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

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

§ 9.11. Issuing a public weighmaster's certificate.

(a) *General requirement.* A licensed public weighmaster shall issue a weighmaster's certificate with respect to any public weighing he conducts.

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

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

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

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

(f) *Clarity required.* A licensed public weighmaster shall issue a complete and accurate weighmaster's certificate that clearly shows what weights were actually determined. If the certificate form provides for the entry of gross, tare and net weights, and the licensed public weighmaster determines fewer than these three weights, the public weighmaster shall strike through or otherwise cancel these undetermined weights on the certificate. If weights recorded on a certificate were determined on different dates, the certificate shall clearly report these dates. If the weights recorded on the certificate were determined using different scales, the certificate shall clearly identify these scales.

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

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

(h) *Distribution of original and copies.*

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

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

§ 9.12. Retention and inspection of certificates.

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

SOLID FUEL

§ 9.13. Weighmaster's certificate required.

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

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

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

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

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

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

(1) The net contents of the container or bag (expressed in avoirdupois pounds).

(2) The type of solid fuel.

(3) The name, address, city, state and zip code of the seller.

§ 9.22. Sales by employer-producer to employees.

(a) *Sales generally.* If it is specified under the provisions of a contract, an employer-producer of solid fuel may sell solid fuel at cost, by cubic contents instead of weight, to its employees for their own use and consump-

tion. No solid fuel sold in this way may be transported over a public highway unless the operator of the vehicle possesses a certificate of origin.

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

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

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

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

§ 9.23. Certificate affecting weighing requirements.

(a) *Authorization to haul without weighmaster's certificate.* If, for any good and sufficient reason, it is impossible to weigh solid fuel at the point of origin and if the solid fuel is loaded into vehicles by the producer but the sale is not consummated nor delivery actually started, and if the producer or merchant can prove to the satisfaction of the Department that a new scale cannot be purchased or repairs secured for a scale already installed, the Department will issue an authorization to haul the solid fuel on the public highway to the nearest available scale of a licensed weighmaster of the Commonwealth for a distance not to exceed 10 miles, at which point the gross, tare and net weight of the solid fuel is determined so that the producer of the solid fuel is able to consummate its sale and the trucker will be furnished with a proper weighmaster's certificate prior to the departure of the solid fuel for delivery to the consumer.

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

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

(c) *Source and disposition of certificate of transport.* The certificate of transport shall be furnished by the owner or lessor of the mine or breaker and surrendered to the weighmaster upon issuance of the certificate of a weighmaster.

(d) *Registration.* An owner or lessor of mines or breakers operating under this section shall register with the county inspector of weights and measures in the county in which they are located the name and location of the mines or breakers and the names and locations of the scales to which they propose to transport solid fuel for the purpose of weighing before starting it out for delivery. A copy of this registration shall be filed with the Department, at the address in § 2.2 (relating to contacting the Department).

§ 9.24. Limitations of certificate for anthracite.

(a) *Certificate of quality required.* In the case of anthracite, except barley and the smaller sizes, being transported under § 9.23 (relating to solid fuel: certificate affecting weighing requirements), a weighmaster may not weigh the anthracite unless the certificate of transport is accompanied by the following certificate of quality, made out in ink or indelible pencil, in triplicate with the original bearing the legend "original" and the copies bearing the legend "copy" in 1 inch letters diagonally across the face, and sufficiently mutilated at the left end to permit it to be securely attached to the corresponding copies of the certificate of the weighmaster as provided in subsection (b):

**CERTIFICATE OF QUALITY
PENNSYLVANIA ANTHRACITE STANDARDS LAW**

Name of Producer _____
 ADDRESS OF PREPARATION PLANT OR BREAKER _____
 Weighmaster's Certificate Serial No. _____
 Quality Certificate Serial No. _____
 Date _____
 Name and Address of Purchaser or Consignee: _____
 Size of Anthracite _____
 Model and Registration Number of Transporting Vehicle _____
 ATTESTED: "STANDARD ANTHRACITE" or "SUBSTANDARD ANTHRACITE"
 (State which kind) _____

 (Name of Shipper)
 By: _____
 (Signature or facsimile signature)
 (Officer, partner or owner)

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

§ 9.25. Responsibilities of weighmasters and shippers.

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

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

§ 9.26. Certificate of special transportation.

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

- (1) The date and time on which the certificate was issued.
- (2) The license number of the truck.
- (3) The name of the owner or lessor mine, stripping operation or culm bank.
- (4) The destination of the vehicle.
- (5) The purpose for which the coal is being transported; that is, coking, preparation for sale or railroad cars.

(b) *Issuance and surrender.* A certificate of special transportation shall be issued for each day to the driver of each truck by a responsible employe of the operator in charge of the mine, stripping or culm bank or of the preparation plant, at or before starting out for delivery for that day, and shall be surrendered at the point of delivery when the last load for the day is delivered, to a responsible employe at the operation, where the certificate shall be kept for 90 days.

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

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

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

- (1) The operator of the vehicle shall present to the weighmaster a certificate of the weighmaster showing the tare weight, as weighed on a scale capable of weighing the vehicle, prior to loading.
- (2) The net weight being loaded in the vehicle shall be determined at the time of loading by weighing mine cars or buggies and deducting the tare weight of the mine cars or buggies.
- (3) The gross weight shall be determined by adding the tare and the net weight.

§ 9.28. Reweighing and issuance of certificates.

(a) *Conditions of reweighing.* A licensed weighmaster may not reweigh or issue a certificate of a weighmaster for solid fuel unless the motor vehicle operator has surrendered the original and duplicate certificates of a weighmaster in his possession pertaining to the solid fuel. These certificates shall be attached by the weighmaster to the scale copy of the new certificate which shall be issued and maintained in a manner that they may be easily reconciled. A duplicate copy may be returned to the operator of the vehicle if it is obliterated with a rubber stamp using the following legend:

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

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

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

§ 9.29. Reciprocity with New York.

Due to reciprocal policies of New York, the several county, city and State inspectors of weights and measures are authorized to recognize and accept weight certificates issued within a zone of 5 miles from the New York State border line, if solid fuel is weighed and the certificates are issued by a weighmaster licensed by New York, whose scales are located not more than 5 miles distant from the border line of this Commonwealth.

CHAPTER 10. DEVICE TYPE APPROVAL

Sec.	
10.1.	Purpose.
10.2.	Prohibition with respect to unapproved devices.
10.3.	General standard for approval by Department.
10.4.	Basic procedure.
10.5.	Meeting the general standard for approval.
10.6.	Application and review.
10.7.	Certificate of approval.
10.8.	Marking of approved devices.
10.9.	Specifications, variations and tolerances with respect to device type approval.
10.10.	Fees.

§ 10.1. Purpose.

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

§ 10.2. Prohibition with respect to unapproved devices.

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

§ 10.3. General standard for approval by the Department.

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

§ 10.4. Basic procedure.

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

§ 10.5. Meeting the general standard for approval.

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

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

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

§ 10.6. Application and review.

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

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

- (1) The name and address of the applicant.
- (2) A detailed description of the type of weighing and measuring device with respect to which approval is sought.
- (3) A copy of any certificate of conformance issued by the National Type Evaluation Program administered by NCWM with respect to that type.
- (4) A copy of any certificate of conformance issued by NIST with respect to that type.
- (5) Other documentation necessary to a reasoned determination by the Department as to whether the type meets the general standard in §§ 10.3 and 10.5 (relating to general standard for approval by the Department; and meeting the general standard for approval). If a certificate of conformance as described in paragraph (2) or (3) is not submitted, a sample of the type—or specifications with respect to the type—shall be submitted as part of the application.

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

(7) Other information the Department might reasonably require.

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

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

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

§ 10.7. Certificate of approval.

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

- (1) The name and address of the person to whom it is issued.
- (2) A description of the type of weighing and measuring device with respect to which approval is granted.
- (3) A reference to the requirement that devices of the approved type be clearly marked for purposes of identification with the name, initials or trademark of the manufacturer and with the manufacturer's designation which positively identifies the pattern or design of the device unless a waiver is obtained from the Department in accordance with section 4174 of the act (relating to marking of approved weights and measures).
- (4) The date of issuance of the certificate.
- (5) Other information deemed relevant by the Department.

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

§ 10.8. Marking of approved devices.

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

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

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

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

(b) Meeting the standards.

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

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

§ 10.10. Fees.

(a) Fees. The State Metrology Laboratory may charge an applicant a fee for conducting the tests as might be required for device type approval under this chapter.

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

PART II. PACKAGING AND LABELING

CHAPTER 21. GENERAL PROVISIONS

PRELIMINARY PROVISIONS

§ 21.1. Definitions.

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

[Act—The Weights and Measures Act of 1965 (76 P. S. §§ 1651—1692) (Transferred from 76 P. S. §§ 100-1—100-42 in 1978).]

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

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

* * * * *

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

* * * * *

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

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

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

(Editor’s Note: As part of this proposed rulemaking, the Department proposes to delete the existing text of §§ 35.1—35.3 which appear at 70 Pa. Code pages 35-1 and 35-2, serial pages (244743) and (244744).)

CHAPTER 35. (Reserved)

§ 35.1. (Reserved).

§ 35.2. (Reserved).

§ 35.3. (Reserved).

(Editor’s Note: As part of this proposed rulemaking, the Department proposes to delete §§ 39.1—39.20 which appear at 70 Pa. Code pages 39-1—39-13, serial pages (244747) to (244759).)

CHAPTER 39. (Reserved)

§§ 39.1—39.20. (Reserved).

[Pa.B. Doc. No. 98-1651. Filed for public inspection October 9, 1998, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 97]

Boating

The Fish and Boat Commission (Commission) proposes to amend § 97.1 (relating to personal flotation devices). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to the mandatory wearing of personal flotation devices (PFD).

A. Effective Date

This proposed amendment, if approved on final rulemaking, will go into effect on January 1, 2000.

B. Contact Person

For further information on the proposed change, contact John F. Simmons, Director, Bureau of Boating and Education, (717) 657-4538, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA

17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

This proposed amendment is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

The proposed amendment is designed to update, modify and improve Commission regulations pertaining to boating. The specific purpose of the proposed amendment is described in more detail under the summary of proposal. Prior to consideration by the Commission, the Commission's Boating Advisory Board reviewed the proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

E. Summary of Proposal

Section 97.4 (relating to personal flotation devices). From 1988 through 1997, 147 people lost their lives in recreational boating accidents in this Commonwealth. About one-half of these fatalities occurred during the cool weather months outside the traditional summer boating season. It has been proven that wearing PFDs will save lives. Government has been reluctant to mandate the wearing of PFDs because of personal liberty issues as well as the unavailability of devices that could be worn comfortably while participating in various boating activities. Manufacturers of PFDs have made great strides in recent years. In 1997, fully inflatable devices were approved for use on recreational boats for the first time.

The United States Coast Guard has recently closed its request for comments about the mandatory wearing requirements for recreational boaters. The data has not been compiled yet, but preliminary reports are that most comments stated that this requirement is rightly the responsibility of the states and not the Federal government. The Commission has considered the issue of mandatory PFD wearing several times. The latest was in January 1996. At the time, the proposal was not accepted because inflatable PFDs were not yet approved. Only four comments were received. Two opposed the requirement and two supported the requirement. Additionally, the Type IV throwable PFD is no longer accepted on recreational boats. All boats must now carry wearable PFDs.

Considering the increased availability of new PFDs and the continuing deaths during cool weather months, the Commission is again proposing the adoption of amendments that would require boaters to wear PFDs from October 1 through the Friday before Memorial Day. Thirty to 40 people might be alive today if they had worn a PFD during this critical time period.

F. Paperwork

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to the Executive Director, Fish and Boat

Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 60 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-86. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

* * * * *

(i) Between October 1 and the Friday before Memorial Day, all persons shall wear a Type I, II, III or V Coast Guard approved PFD when onboard any canoe or kayak or any other boat less than 16 feet in length when the boat is being operated and not affixed or made fast to the shore.

[Pa.B. Doc. No. 98-1652. Filed for public inspection October 9, 1998, 9:00 a.m.]

[58 PA. CODE CHS. 53, 93 AND 109]

Commission Property and Boating

The Fish and Boat Commission (Commission) proposes to amend §§ 53.8, 93.13 and 109.4 (relating to boats; issuing agents; and water skiing, aquaplaning, site skiing and similar activities). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to Commission property and boating.

A. Effective Date

These proposed amendments, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendments.

B. Contact Person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

These proposed amendments are published under the statutory authority of sections 741, 5122 and 5123 of the code (relating to control of property; and registration, licenses, permits, plates and statistics; and general boating regulations).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to Commission property, issuing agents and boating. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. Prior to consideration by the Commission, the Commission's Boating Advisory Board reviewed all proposals relating to boating and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

E. Summary of Proposal

1) Section 53.8 (relating to boats). In response to a request by an individual boater, the Commission in the early 1990s approved the use of non-Coast Guard approved inflatable personal flotation devices (PFDs) by operators of sculls and rowing shells and racing kayaks. Without this exemption, these boats were excluded from Commission lakes because at the time no approved inflatable PFDs were available. In the spring of 1998, manufacturers began to make approved devices. With the introduction of these devices, the exemption is no longer needed.

Additional staff review of this regulation determined that it was redundant in that the requirement for PFD carriage is covered under § 97.1 (relating to personal flotation devices). Section 97.1(f) exempts sculls, shells and racing kayaks from the PFD requirements except on Commission and State Park lakes. The Commission therefore proposes to restate this restriction in § 53.8 to assure that there is no misunderstanding about the requirements.

(2) Section 93.13 (relating to issuing agents). In an attempt to provide a greater opportunity for the boating public to be able to register or transfer registration of a boat, the addition of businesses dealing in temporary tag services or messenger services as boat issuing agents will provide one-step service for the boater with regard to the registration of the boat trailer and boat. Currently these businesses fill out boat registration forms and bring them to the Harrisburg office for the issuance of temporary boat registration decals. This practice has placed an additional demand on the staff in the Registration Section. Boaters currently using these businesses for processing their boat registrations may at times leave with the impression that their boats are legally registered once the messenger or tag service has completed the application. Many of these messengers and tag services provide evening and weekend hours that will be a direct benefit to the public. The Commission therefore proposes to amend § 93.13 to include temporary tag services or messenger services as issuing agents for temporary boat registrations.

3) Section 109.4 (relating to water skiing, aquaplaning, site skiing and similar activities). In February 1998, the Commission received a letter requesting that it consider permitting the use of longer rope by commercial parasail operators using winch boats and platforms. This type of operation is common in resort areas and has been successfully used for many years. The benefit of using a winch boat and platform is that rope up to 1,200 feet is possible. This gives the user a greater thrill than the standard 300 foot length currently permitted in this Commonwealth. Additionally, the user is able to take his trip and unless planned can take off and land on the boat without getting in the water. Overall, this type of operation is safer than a nonplatform boat or taking off from

the shore or dock. Therefore, the Commission is proposing to amend this section to allow ski tow ropes of 600 feet for commercial winch boat parasails.

F. Paperwork

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the Pennsylvania Bulletin. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO, Executive Director

Fiscal Note: 48A-85. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

* * * * *

(b) [Watercraft on Commission lakes shall have on board a Coast Guard approved Type I, II, III or V personal flotation device in good serviceable condition for each occupant. Occupants of sculls, shells and racing kayaks may substitute and use non-Coast Guard approved inflatable personal flotation devices in accordance with their design and manufacturer recommendation.] Occupants of sculls, shells and racing kayaks are required to carry or wear a Coast Guard approved personal flotation device.

* * * * *

Subpart C. Boating

CHAPTER 93. REGISTRATION AND NUMBERING

§ 93.13. Issuing agents.

(a) The designation of issuing agents for temporary boat registrations shall be limited to the Commission and Commission offices, county treasurers [and], businesses dealing in boats, boating equipment or sporting goods and temporary tag services or messenger services approved by the Department of Transportation for the issuance of temporary boat trailer registrations.

* * * * *

**CHAPTER 109. SPECIALTY BOATS AND
WATERSKIING ACTIVITIES**

§ 109.4. Water skiing, aquaplaning, site skiing and similar activities.

* * * * *

(e) *Ski tow ropes.* Ski tow ropes may not exceed the following lengths:

* * * * *

(5) Commercial winch boat parasails—600 feet.

* * * * *

[Pa.B. Doc. No. 98-1653. Filed for public inspection October 9, 1998, 9:00 a.m.]

[58 PA. CODE CH. 65]

Fishing

The Fish and Boat Commission (Commission) proposes to amend (relating to miscellaneous special fishing regulations). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to fishing.

A. Effective Date

These proposed amendment, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendment.

B. Contact Person

For further information on the proposed change, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

This proposed amendment is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The proposed amendment is designed to update, modify and improve Commission regulations pertaining to fishing. The specific purpose of the amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Section 65.24 (relating to miscellaneous special regulations).

(1) In 1991, the Commission received requests for the issuance of net permits under section 2902 of the code (relating to net permits) to use throw or cast nets to take gizzard shad and alewife in Lake Raystown. Based upon the recommendations of the Bureaus of Law Enforcement and Fisheries, and after discussion at a FUTURE Taskforce meeting, the Executive Director exercised his discretion to issue the permits subject to certain conditions. For 1998, the Commission has issued about 160 cast net permits valid for Lake Raystown only to be used exclusively for the seining of gizzard shad and alewife. The nets are limited to a 6-foot radius (12-foot diameter). Although the original discussion indicated that mesh size should be no less than 1/2 inch, the vast majority of the current permits cover mesh size of at least 3/8 inches. Six of the current permits cover nets with 1/8 inch mesh.

This program has worked well on Lake Raystown, and the Commission has received requests to issue similar permits for cast nets or throw nets for use on other waters. The original intent, however, was to limit these permits to Lake Raystown, and the Commission believes that it would be inappropriate to expand the program at this time.

Although no regulatory action is required to maintain the program in its present scope since the issuance of these permits on a discretionary basis is expressly authorized by both statute and regulation, the Commission believes that it would be desirable to spell out the guidelines for use of cast nets and throw nets in its regulations and the Summary booklet. The Commission, therefore, proposes an amendment that will allow the present practice to continue with standardized guidelines for net size and mesh size. The proposed amendment also will make it clear that these permits will only be issued for Lake Raystown.

(2) The Youghiogheny River, located in Somerset, Fayette, Westmoreland and Allegheny Counties, provides a popular coldwater fishery in southwestern Pennsylvania. As a result of the coldwater release from Youghiogheny River Lake, 28.3 miles of the river is managed to provide trout angling opportunities. Present management provides for catchable trout angling opportunities on the 1.1 mile section from the outflow of the lake downstream to the confluence with the Casselman River, and an additional 27.2 miles downstream of the confluence with the Casselman River managed with the planting of fingerling trout. Currently, the section of the river from the confluence with the Casselman River downstream to the mouth is managed under § 65.24. Under this regulation, there is no closed season on trout, a minimum size limit of 7 inches, a creel limit of 8 trout per day from opening day through Labor Day and a three trout per day creel limit until the following opening day of trout season.

The provision of the coldwater release offers an opportunity to enhance the quality of the coldwater fishery on the Youghiogheny River. Therefore, the Commission has designated a 3.5 mile section (from the confluence with Ramcat Run downstream to the pipeline crossing at the confluence with Lick Run) to be regulated and managed under § 65.4a (relating to all-tackle trophy trout). This regulation provides for year 'round trout angling with no tackle restriction and a 14 inch minimum size limit and two trout daily creel limit during the regular trout season (8 a.m. opening day through midnight Labor Day) and no harvest permitted during the remainder of the season. Because the Commission has added this stream section to its all-tackle trophy trout program, the Commission proposes to clarify the length of the section described in § 65.24.

F. Paperwork

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to the Executive Director, Pennsylvania Fish

and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-84. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS
§ 64.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulation:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>

Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River)	***** The Executive Director or a designee may issue permits for use of cast nets or throw nets for taking only gizzard shad and alewife on Lake

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		Raystown. In addition to other permit conditions that the Executive Director may require, the permits shall be limited to cast nets or throw nets of no greater than 6 feet in radius (12 feet in diameter) with a mesh size of at least 3/8 inches.

Somerset, Fayette, Westmoreland and Allegheny	Youghiogheny River from confluence with Casselman River downstream to [mouth of river] the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river	No closed season on trout. Daily limit opening day of trout season to Labor Day—eight trout; day after Labor Day to succeeding opening day of trout season—three trout per day. Inland regulations apply to warmwater/coolwater species.

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