

CHAPTER 4. CERTIFIED EXAMINERS OF WEIGHTS AND MEASURES

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Authority

The provisions of this Chapter 4 issued under the Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4104—4194, unless otherwise noted.

Source

The provisions of this Chapter 4 adopted May 7, 1999, effective May 8, 1999, 29 Pa.B. 2460, unless otherwise noted.

§ 4.1. Purpose.

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

§ 4.2. CEWM.

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

§ 4.3. Authority of a CEWM.

(a) *General.* A CEWM may perform the annual testing and inspection of any weighing or measuring device which the Department is required to perform under section 4112(b) of the act (relating to general testing and inspections), and is

listed in § 4.4 (relating to categories and types of weighing and measuring devices which a CEWM may inspect), and with respect to which the CEWM is certified. A CEWM may inspect these weighing and measuring devices regardless of whether the CEWM is the owner or lessor of the devices or is an employe or agent of the owner or lessor of the devices. The Department may accept the report of a CEWM as sufficient to meet the statutory testing and inspection requirements in section 4112(b) of the act.

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

§ 4.4. Categories and types of weighing or measuring devices which a CEWM may inspect.

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

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

Cross References

This section cited in 70 Pa. Code § 4.2 (relating to CEWM); 70 Pa. Code § 4.3 (relating to authority of a CEWM); 70 Pa. Code § 4.6 (relating to training courses); 70 Pa. Code § 4.14 (relating to inspection and testing by the Department); and 70 Pa. Code § 8.3 (relating to training and certification with respect to individual types of weighing and measuring devices).

§ 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 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.

Cross References

This section cited in 70 Pa. Code § 4.6 (relating to training courses).

§ 4.6. Training courses.

(a) *NIST training courses.* Under section 4110(b) of the act (relating to specific powers and duties of department regulations), a training course now or hereafter prescribed by NIST for a particular category or type of measuring or weighing device listed in § 4.4 (relating to categories and types of weighing and

measuring devices which a CEWM may inspect) is an appropriate training course for the subject category or type of weighing or measuring device.

(b) *Obtaining a list of current NIST training courses.* The Department will provide a current list of NIST training courses and the category or type of weighing or measuring device with respect to which each course is applicable upon request.

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

(d) *Effect of addition of a course to list of 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).

Cross References

This section cited in 70 Pa. Code § 2.1 (relating to definitions); 70 Pa. Code § 4.8 (relating to applying for certification); and 70 Pa. Code § 8.3 (relating to training and certification with respect to individual types of weighing and measuring devices).

§ 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 is at least 18 years of age and has successfully completed a training course prescribed by NIST and described in § 4.6 (relating to training courses) may apply to the Department for a CEWM certificate. Certification is granted through issuance of the certificate described in § 4.9 (relating to CEWM certificate).

(b) *Form of application.* A person seeking certification under the act may obtain an application form from the Department at the address in § 2.2 (relating

to contacting the Department). The applicant shall complete the form and return it to that same address. The application form shall require the following information:

- (1) The name, mailing address and birth date of the person seeking a certificate.
 - (2) The name, location and date of completion of any approved training course completed by the person seeking a certificate.
 - (3) A copy of any certificate of completion with respect to the approved training course.
 - (4) The category or type of weighing or measuring device with respect to which the certificate is sought.
 - (5) A detailed description of the equipment the person seeking the CEWM certificate will use in conducting inspections of the weighing or measuring devices of the category or type with respect to which certification is sought, with copies of applicable verifications of accuracy, inspection records and other documentation demonstrating the equipment is adequate and meets the requirements of § 6.3 (relating to field standards).
 - (6) Two identical 1-inch square color photographs (front facial view) of the person seeking a certificate.
 - (7) The date of the application.
 - (8) Other information the Department might reasonably require.
- (c) *Departmental action on application.* The Department will, within 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation. If the Department requests additional clarification or documentation, its review and consideration of the application will cease until the requested material is received, at which time the 30-day review period shall begin again.

Cross References

This section cited in 70 Pa. Code § 4.11 (relating to obtaining a new CEWM certificate); and 25 Pa. Code § 4.15 (relating to suspension or revocation of certification).

§ 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 CEWM certificate), shall be 3 years from the date of issuance.

(4) A unique identification number.

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

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

(7) Other information the Department might reasonably include.

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

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

Cross References

This section cited in 70 Pa. Code § 4.8 (relating to applying for certification).

§ 4.10. Expiration of CEWM certificate.

A CEWM certificate will be valid for 3 years from the date it is issued, unless it is suspended or revoked earlier in accordance with the procedures in § 4.15 (relating to suspension or revocation of certification).

Cross References

This section cited in 70 Pa. Code § 4.9 (relating to CEWM certificate).

§ 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 will use applicable NIST standards as the testing and inspection performance standards of the Department.

§ 4.13. Reporting procedures for CEWM.

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

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

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

- (1) The printed name of the CEWM.
- (2) The identification number of the CEWM. This number appears on the CEWM certificate.
- (3) The date of the inspection.
- (4) The location of the inspection.
- (5) The category or type of each weighing or measuring device inspected.
- (6) The manufacturer, model and serial number of each device inspected.
- (7) A description of any defects or deficiencies in the weighing or measuring device inspected, and whether they have been repaired or rectified.
- (8) A statement of whether the weighing or measuring device is in compliance with applicable NIST performance standards.
- (9) Comments or explanations the CEWM deems necessary for clarity.
- (10) The signature of the CEWM.

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

- (1) The CEWM shall distribute the original of this form to the owner of the weighing or measuring device inspected, or to a responsible person at the site where the inspection occurred.
- (2) The CEWM shall forward a copy of this form to the Department by mailing or delivering it to the Department by the 10th day of the month immediately following the month the inspection was conducted. Delivery may be

accomplished by electronic means such as modem transmission/e-mail or 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.

(e) *Prompt report of inaccurate devices.*

(1) In addition to the other reporting requirements of this section, a CEWM shall promptly report any commercially used weighing and measuring device that the CEWM finds, upon inspection, does not conform with applicable NIST performance standards or is otherwise unsuitable for commercial use.

(2) This report shall:

- (i) Provide the location of the device.
- (ii) Identify the device by name, model number and serial number.
- (iii) Describe the deficiency.
- (iv) State the date and time of the CEWM's inspection.

(3) This report shall be faxed or delivered to the Department at the address in § 2.2 (relating to contacting the Department) within 48 hours of the CEWM's inspection.

Cross References

This section cited in 70 Pa. Code § 7.4 (relating to report by inspectors).

§ 4.14. Inspection and testing by the Department.

(a) *Random inspection and testing.* In accordance with section 4110 of the act (relating to specific powers and duties of the department; regulations), the Department will conduct random inspection and testing of a sample of devices that have been inspected and tested by a CEWM to determine whether the CEWM conducted the inspection and testing in accordance with the act and this chapter. This random inspection and testing will include a representative sample of each of the types of weighing and measuring devices in § 4.4 (relating to categories and types of weighing or measuring devices which a CEWM may inspect).

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

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

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

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

Cross References

This section cited in 70 Pa. Code § 4.15 (relating to suspension or revocation of certification).

§ 4.15. Suspension or revocation of certification.

(a) *Basis for action.* The Department may suspend or revoke a CEWM certificate if the certificateholder 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 certificateholder by personal service or by regular mail to the address provided by the certificateholder 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.

Cross References

This section cited in 70 Pa. Code § 4.10 (relating to expiration of CEMW certificate); and 70 Pa. Code § 4.14 (relating to inspection and testing by the Department).

§ 4.16. CEWM list.

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

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

- (4) Each category or type of weighing or measuring device with respect to which the CEWM is certified.
- (5) The expiration date of certification.
- (6) The unique identification number of the CEWM's certificate.
- (b) *Distribution of copies.* The Department will provide a copy of the current CEWM list upon request.

§ 4.17. Civil penalties.

- (a) *General.* The Department may assess a civil penalty of up to \$10,000 against a person that violates 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 a 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.

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