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TITLE 3
AGRICULTURE

Part

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VI. Development, Marketing and Promotion
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Enactment. Unless otherwise noted, the provisions of Title 3 were added December 12, 1994, P.L.903, No.131, effective in 60 days.

Special Provisions in Appendix. See sections 2, 3, 4 and 5 of Act 131 of 1994 in the appendix to this title for special provisions relating to responsibility for certain regulations, transfers, continued powers and exemption from certain registration fee.

PART I
GENERAL PROVISIONS

Chapter

1. Preliminary Provisions
3. Local Regulation
5. Nutrient Management and Odor Management
6. Agriculture-Linked Investment Program
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Enactment. Part I was added December 12, 1994, P.L.903, No.131, effective in 60 days.

CHAPTER 1
PRELIMINARY PROVISIONS

Sec.

101. Short title of title.
102. Definitions.

Enactment. Chapter 1 was added December 12, 1994, P.L.903, No.131, effective in 60 days.

§ 101. Short title of title.

This title shall be known and may be cited as the Agriculture Code.

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Agriculture of the Commonwealth.

"Secretary." The Secretary of Agriculture of the Commonwealth.

CHAPTER 3
LOCAL REGULATION

Subchapter

A. Preliminary Provisions
B. Normal Agricultural Operations

Enactment. Chapter 3 was added July 6, 2005, P.L.112, No.38, effective immediately.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

311. Scope.
312. Definitions.

§ 311. Scope.

This chapter deals with local regulation of normal agricultural operations.

§ 312. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Local government unit." A political subdivision of the Commonwealth.

"Normal agricultural operation." As defined under section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Unauthorized local ordinance." An ordinance enacted or enforced by a local government unit which does any of the following:

(1) Prohibits or limits a normal agricultural operation unless the local government unit:

(i) has expressed or implied authority under State law to adopt the ordinance; and

(ii) is not prohibited or preempted under State law from adopting the ordinance.

(2) Restricts or limits the ownership structure of a normal agricultural operation.

SUBCHAPTER B
NORMAL AGRICULTURAL OPERATIONS

Sec.

313. Certain local government unit actions prohibited.

314. Duties of Attorney General.
315. Right of action.
316. Commonwealth Court masters.
317. Attorney fees and costs.
318. Reports to General Assembly.

§ 313. Certain local government unit actions prohibited.

(a) Adoption and enforcement of unauthorized local ordinances.--A local government unit shall not adopt nor enforce an unauthorized local ordinance.

(b) Existing local ordinances.--This chapter shall apply to the enforcement of local ordinances existing on the effective date of this section and to the enactment or enforcement of local ordinances enacted on or after the effective date of this section.

(c) Construction.--Notwithstanding the provisions of this section, nothing in this chapter shall be construed to diminish, expand or otherwise affect the legislative or regulatory authority of local government units under State law, including the following:

(1) Chapter 5 (relating to nutrient management and odor management).

(2) The regulation, control or permitting procedures for the land application of class A or B biosolids.

§ 314. Duties of Attorney General.

(a) Request for review.--An owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a) (relating to right of action).

(b) Discretion.--The Attorney General has the discretion whether to bring an action under section 315(a).

(c) Response.--Within 120 days after receiving a request under subsection (a), the Attorney General shall advise the person that made the request whether or not the Attorney General will bring legal action under section 315(a). If the request under subsection (a) is in writing, the response shall be in writing.

(d) Consultation.--The secretary and the dean of the College of Agricultural Sciences at The Pennsylvania State University shall, upon request of the Attorney General, provide expert consultation regarding the nature of normal agricultural operations in this Commonwealth.

§ 315. Right of action.

(a) Attorney General action.--The Attorney General may bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.

(b) Other party action.--Notwithstanding any provision of 42 Pa.C.S. Ch. 85 Subch. C (relating to actions against local parties), any person who is aggrieved by the enactment or enforcement of an unauthorized local ordinance may bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.

Cross References. Section 315 is referred to in sections 314, 316, 317 of this title.

§ 316. Commonwealth Court masters.

(a) General rule.--The Commonwealth Court may promulgate rules for the selection and appointment of masters on a full-time or part-time basis for actions brought under section

315 (relating to right of action). A master shall be a member of the bar of this Commonwealth. The number and compensation of masters shall be fixed by the Commonwealth Court and their compensation shall be paid by the Commonwealth.

(b) Hearings before masters.--The Commonwealth Court may direct that hearings in actions brought under section 315 be conducted in the first instance by the master in the manner provided for in this subchapter.

(c) Recommendations of masters.--Upon the conclusion of a hearing before a master, the master shall transmit written findings and a recommendation for disposition to the president judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding.

(d) Rehearing before president judge.--The findings and recommendations of the master shall become the findings and order of the Commonwealth Court upon written confirmation by the president judge. A rehearing may be ordered by the president judge at any time upon cause shown.

§ 317. Attorney fees and costs.

In an action brought under section 315(b) (relating to right of action), the court may do any of the following:

(1) If the court determines that the local government unit enacted or enforced an unauthorized local ordinance with negligent disregard of the limitation of authority established under State law, it may order the local government unit to pay the plaintiff reasonable attorney fees and other litigation costs incurred by the plaintiff in connection with the action.

(2) If the court determines that the action brought by the plaintiff was frivolous or was brought without substantial justification in claiming that the local ordinance in question was unauthorized, it may order the plaintiff to pay the local government unit reasonable attorney fees and other litigation costs incurred by the local government unit in defending the action.

§ 318. Reports to General Assembly.

The Attorney General shall provide to the chairman and the minority chairman of the Senate Committee on Agricultural and Rural Affairs and the chairman and minority chairman of the Agricultural and Rural Affairs Committee of the House of Representatives an annual report to include the following:

(1) Information on how many reviews were requested, the nature of the complaints and the location of the ordinances cited.

(2) Information on how many reviews were conducted.

(3) Information on how many legal actions were brought by the Attorney General.

(4) Information on the outcome of legal actions brought by the Attorney General.

CHAPTER 5
NUTRIENT MANAGEMENT AND ODOR MANAGEMENT

Sec.

501. Scope.
502. Declaration of legislative purpose.
503. Definitions.
504. Powers and duties of commission.
505. Powers and duties of Department of Environmental Protection.
506. Nutrient management plans.

507. Manure application setbacks and buffers.
508. Nutrient management certification program and odor management certification program.
509. Odor management plans.
510. Nutrient Management Advisory Board.
511. Financial assistance.
512. Nutrient Management Fund.
513. Unlawful conduct.
514. Civil penalties and remedies.
515. Limitation of liability.
516. Enforcement authority; enforcement orders.
517. Appealable actions.
518. Powers reserved under existing laws.
519. Preemption of local ordinances.
520. Repeals.
521. Other statutes not affected.
522. Regulations.

Enactment. Chapter 5 was added July 6, 2005, P.L.112, No.38, effective immediately, unless otherwise noted.

Special Provisions in Appendix. See the preamble and section 4 of Act 38 of 2005 in the appendix to this title for special provisions relating to legislative declarations and continuation of prior law.

Cross References. Chapter 5 is referred to in sections 313, 603, 604, 6801 of this title; section 1202 of Title 8 (Boroughs and Incorporated Towns).

§ 501. Scope.

This chapter relates to nutrient management and odor management.

§ 502. Declaration of legislative purpose.

The purposes of this chapter are as follows:

(1) To establish criteria, nutrient management planning requirements and an implementation schedule for the application of nutrient management measures on certain agricultural operations which generate or utilize animal manure.

(2) To provide for the development of an educational program by the State Conservation Commission in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the department and conservation districts to provide outreach to the agricultural community on the proper utilization and management of nutrients on farms to prevent the pollution of surface water and groundwater.

(3) To require the State Conservation Commission, in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the Department of Environmental Protection, the department and the Nutrient Management Advisory Board to develop and provide technical and financial assistance for nutrient management and alternative uses of animal manure, including a manure marketing and distribution program.

(4) To require the Department of Environmental Protection to assess the extent of nonpoint source pollution from other nutrient sources, determine the adequacy of existing authority and programs to manage those sources and make recommendations to provide for the abatement of that pollution.

(5) To require the State Conservation Commission, in conjunction with the Nutrient Management Advisory Board, to develop and administer a regulatory program requiring odor management plans addressing new and expanded animal housing

facilities and manure management facilities at concentrated animal operations and concentrated animal feeding operations after July 19, 1993, and to encourage the voluntary implementation of odor management plans for other agricultural operations.

§ 503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"AEU." Animal equivalent unit.

"AEU per acre." An animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.

"Agricultural operations." The management and use of farming resources for the production of crops, livestock or poultry.

"Animal equivalent unit." One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

"Animal housing facility." A roofed structure or facility, or any portion thereof, used for occupation by livestock or poultry.

"Best management practice" or **"BMP."** A practice or combination of practices determined by the commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface water and groundwater, taking into account applicable nutrient requirements for crop utilization. The term includes, but is not limited to:

(1) Conservation tillage.
(2) Crop rotation.
(3) Soil testing.
(4) Manure testing.
(5) Diversions.
(6) Manure storage facilities.
(7) Storm water management practices.
(8) Nutrient application.

"Board." The Nutrient Management Advisory Board created by section 510 (relating to Nutrient Management Advisory Board).

"Commission." The State Conservation Commission established by the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Concentrated animal feeding operation." An agricultural operation that meets the criteria established by the Department of Environmental Protection under authority of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

"Concentrated animal operation." Agricultural operations meeting the criteria established under this chapter.

"Conservation district." Any county conservation district established under the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Cooperative extension." The Cooperative Extension Service of The Pennsylvania State University.

"Department." The Department of Agriculture of the Commonwealth.

"Fund." The Nutrient Management Fund.

"Manure management facility." A manure storage facility, including a permanent structure or facility, or a portion of a structure or facility, utilized for the primary purpose of containing manure. The term includes liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement

building, permanent stacking and composting facilities and manure treatment facilities. The term does not include the animal confinement areas of poultry houses, horse stalls, free stall barns or bedded pack animal housing systems.

"Nutrient." A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

"Nutrient management plan." A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in sections 504 (relating to powers and duties of commission) and 506 (relating to nutrient management plans).

"Nutrient management specialist." A person satisfying the certification requirements of section 508 (relating to nutrient management certification program and odor management certification program).

"Odor management plan." A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

§ 504. Powers and duties of commission.

The commission shall have the following powers and duties:

(1) Before July 19, 1995, and periodically thereafter, to promulgate regulations, in consultation with the department, the Department of Environmental Protection and the board, establishing minimum criteria for nutrient management plans developed in accordance with section 506 (relating to nutrient management plans) and other regulatory requirements to implement this chapter. In establishing such criteria, the commission shall consult the Manure Management for Environmental Protection Manual of the Department of Environmental Protection, the Pennsylvania Agronomy Guide published by The Pennsylvania State University and the Pennsylvania Technical Guide for Soil and Water Conservation published by the United States Department of Agriculture's Soil Conservation Service. The criteria to be established pursuant to this section shall include the following:

(i) An identification of nutrients as defined by this chapter. Unless otherwise appropriate pursuant to specific criteria which shall be established by the commission, there shall be a presumption that nitrogen is the nutrient of primary concern.

(ii) The establishment of procedures to determine proper application rates of nutrients to be applied to land based on conditions of soil and levels of existing nutrients in the soil and the type of agricultural, horticultural or floricultural production to be conducted on the land.

(iii) An identification of best management practices to be utilized for proper nutrient management.

(iv) The establishment of recordkeeping requirements related to land application and distribution of nutrients.

(v) The establishment of minimum standards of construction, location, storage capacity and operation of facilities intended to be used for storage of animal manure.

(vi) The establishment of conditions under which amendments to nutrient management plans are required to be made after initial development or filing.

(vii) The establishment of special criteria which may be utilized for manure handling in emergency situations where there is an outbreak of a contagious disease.

(viii) The establishment of conditions under which changes due to unforeseen circumstances render the plan amendment process set forth in section 506(e) impracticable. Where such conditions exist, the owner or operator of an agricultural operation shall follow the procedures set forth in section 506(f).

(1.1) Within two years following the effective date of this section and periodically thereafter, to promulgate regulations, in consultation with the department, the Department of Environmental Protection and the board, establishing practices, technologies, standards, strategies and other requirements for odor management plans developed in accordance with section 509 (relating to odor management plans). The commission shall consider the following in promulgating the regulations under this paragraph:

(i) Site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds.

(ii) Reasonably available technology, practices, standards and strategies to manage odor impacts, considering both the practical and economic feasibility of installation and operation and the potential impacts from the facilities. Only those technologies, practices, standards and strategies that are necessary to address the offsite impacts of odors associated with these new facilities will be required to be included in the odor management plans.

(2) Prior to the adoption of regulations under paragraph (1.1), to establish interim guidelines for the operations identified in section 509.

(3) To continually evaluate emerging practices, methods and technology for utilization as best management practices and to so identify the practices, where appropriate, pursuant to paragraph (1)(iii).

(4) Beginning October 1, 2002, to evaluate the criteria for concentrated animal operations in this Commonwealth and to make appropriate changes in those criteria by regulation. Any such regulatory change related to concentrated animal operations shall require a two-thirds majority vote of the commission.

(5) Prior to the adoption of regulations under paragraph (1), to recommend, in consultation with the Department of Environmental Protection, the department and the board, interim criteria for the sole purpose of facilitating the initial development of the nutrient management certification program established by this chapter.

(6) Before July 19, 1995, to develop and implement, in cooperation with the department, the board, the Cooperative Extension Service and conservation districts, a program to provide education and technical assistance to the agricultural community and, to the extent funds are available, to provide financial assistance to existing agricultural operations for implementation of proper methods, practices, facilities and techniques for the utilization and

management of nutrients on the farm to prevent the pollution of groundwater and surface water.

(7) To consult with the board as provided in section 510 (relating to Nutrient Management Advisory Board).

(8) To issue orders and take actions as are necessary to administer and enforce this chapter.

(9) To delegate administration or enforcement authority, or both, under this chapter to county conservation districts that have an adequate program and sufficient resources to accept and implement this delegation.

Cross References. Section 504 is referred to in sections 503, 506, 509 of this title.

§ 505. Powers and duties of Department of Environmental Protection.

The Department of Environmental Protection shall have the following powers and duties:

(1) Before July 19, 1994, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which malfunctioning on-lot sewage systems contribute to the pollution of waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(2) Before July 19, 1994, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which improper water well construction contributes to groundwater pollution due to the intrusion of nutrients from the surface and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(3) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which the application of chemical fertilizers and other plant nutrients for nonagricultural purposes contributes to the pollution of the waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(4) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which nutrients from storm water runoff contribute to the pollution of waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(5) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which atmospheric deposition of nutrients contribute to the pollution of the waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(6) To include, in the assessments in paragraphs (1) through (5), recommendations to the General Assembly for budgetary and legislative initiatives where program resources or statutory authority is not adequate to address pollution sources identified in those assessments.

(7) To provide technical and administrative assistance to the commission in carrying out its responsibilities under this chapter.

§ 506. Nutrient management plans.

(a) Concentrated animal operations.--Concentrated animal operations are those agricultural operations where the animal density exceeds two AEUs per acre on an annualized basis. Beginning October 1, 2002, the commission, in consultation with the department, the board, the Department of Environmental Protection and the Cooperative Extension Service, shall review the criteria used to identify concentrated animal operations and make appropriate changes to the definition of concentrated animal operations by regulation.

(b) Development of nutrient management plans.--The operator of any concentrated animal operation shall develop and implement a nutrient management plan consistent with the requirements of this section.

(c) Certification of plans.--All plans and plan amendments shall be developed by nutrient management specialists who shall certify that the plans are in accordance with the requirements of this chapter and the regulations promulgated under this chapter.

(d) Review procedure.--Nutrient management plans required by this section shall be submitted for review in accordance with the following schedule:

(1) For a concentrated animal operation in existence on October 1, 1997, by October 1, 1998.

(2) For a concentrated animal operation which comes into existence after October 1, 1997, by the later of:

(i) January 1, 1998; or

(ii) commencement of operations.

(3) For an agricultural operation which, because of expansion, meets the criteria for a concentrated animal operation, within three months after the date of expansion.

(e) Plan review and approval.--Plans or plan amendments required under this chapter shall be submitted to local conservation districts for review and approval or alternatively to the commission for agricultural operations located in counties not delegated administrative authority under section 504 (relating to powers and duties of commission). Any person performing the plan review must be certified in accordance with section 508 (relating to nutrient management certification program and odor management certification program). Within 90 days of receipt of a nutrient management plan or plan amendment, the reviewing agency shall either approve, modify or disapprove the plan or plan amendment. Approvals shall only be granted for those plans or plan amendments which satisfy the requirements of this chapter and the regulations promulgated under this chapter. Notice of determination to approve, modify or disapprove a plan or plan amendment shall be provided in writing to the person submitting same. Notice of a determination to modify or disapprove shall include an explanation specifically stating the reasons for modification or disapproval. If a plan or plan amendment is disapproved, the person submitting a plan or plan amendment for the first time shall have 90 days after receipt of notice of disapproval to resubmit a revised plan or plan amendment. An agricultural operation that submits a complete plan or plan amendment is authorized to implement the same if the reviewing agency fails to act within 90 days of submittal. Where the reviewing agency fails to so act and the plan or plan amendment is resubmitted and the reviewing agency again fails to act within 90 days of resubmittal, it shall be deemed approved.

(f) Amendments due to unforeseen circumstances.--Amendments to plans or to implementation of plans made after initial

development or filing which satisfy the criteria established under section 504(1)(vii) shall be certified by a nutrient management specialist prior to implementation and submitted to the district within 30 days of implementation.

(g) Implementation.--A person required to develop a nutrient management plan pursuant to subsection (b) shall fully implement such plan within three years of the date such plan is approved or is deemed approved or for which implementation is otherwise authorized pursuant to subsection (e), unless extended for cause shown or by a plan amendment. The three-year implementation schedule shall be extended an additional two years for individual substantial capital improvements required under an approved plan for an operation required to submit a plan under subsection (d)(1) if:

(1) the owner or operator demonstrates that the cost of all or part of the individual improvements for which the extension is applicable cannot be financed through available funding mechanisms; and

(2) a sum of $2,000,000 or more has not been appropriated for grants and loans to the Nutrient Management Fund created under section 512 (relating to Nutrient Management Fund), above and beyond any Chesapeake Bay nonpoint source pollution abatement moneys that may be appropriated to the fund, before October 1, 1998.

(h) Voluntary plans.--Any agricultural operation which is not a concentrated animal operation may voluntarily develop a nutrient management plan and have it reviewed pursuant to this section. To the extent possible, the commission, the Cooperative Extension Service, the department, the Department of Environmental Protection and conservation districts shall assist and promote the development of voluntary plans.

(i) Financial assistance.--Any agricultural operation receiving financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program or otherwise receiving financial assistance under this chapter for the development of a nutrient management plan shall agree to develop and implement a nutrient management plan as a condition for receiving this financial assistance.

(j) Compliance plans.--Any agricultural operation found to be in violation of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, may be required to submit a nutrient management plan within three months of notification thereof and implement the plan in order to prevent or abate such pollution.

(k) Transferability of plans.--A plan approved under this section shall be transferable to a subsequent owner of an agricultural operation upon notification thereof to the district unless the transfer results in operational changes requiring plan modification pursuant to the criteria established under section 504(1)(vi).

(l) Construction of section.--The density criteria for concentrated animal operations as identified in subsection (a) or as it may be subsequently modified by the commission shall only be utilized to identify those agricultural operations for which the planning requirements of this section shall apply and shall not be construed to prohibit the development or expansion of agricultural operations meeting or exceeding such criteria.

Cross References. Section 506 is referred to in sections 503, 504 of this title.

§ 507. Manure application setbacks and buffers.

(a) General rule.--Unless the commission establishes a stricter requirement by regulation, no concentrated animal operation or other agricultural operation receiving manure from a concentrated animal operation directly or indirectly through a broker or other person may mechanically land apply manure within 100 feet of surface water unless a vegetated buffer no less than 35 feet in width and meeting standards established by the Natural Resources Conservation Service is used to prevent manure runoff into the surface water.

(b) Definition.--As used in this section, the term "surface water" means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

Effective Date. Section 5(1) of Act 38 of 2005 provided that section 507 shall take effect in 180 days.

§ 508. Nutrient management certification program and odor management certification program.

(a) Requirement.--The department shall establish, in consultation with the commission, a nutrient management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop nutrient management plans and an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations.

(b) Interim nutrient management certification program.--Until the department develops and implements a nutrient management certification program, persons having the following qualifications shall, upon request, receive interim certification from the department.

(1) the person has at least two years' experience in the development of nutrient management plans;

(2) the person is approved to develop nutrient management plans approved under the Chesapeake Bay Nonpoint Source Pollution Abatement Program, the United States Department of Agriculture's Water Quality Improvement Projects Program or other programs requiring submission and approval of a nutrient management plan, including sludge disposal under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act; or

(3) the person is a farmer who has been provided training and assistance in developing and implementing nutrient management plans.

(c) Nutrient management specialist.--A person shall not certify a nutrient management plan or plan amendment unless that person has first satisfied the requirements of this section.

(d) Odor management specialist.--A person shall not certify an odor management plan or plan amendment unless that person has first satisfied the applicable requirements of this section.

Cross References. Section 508 is referred to in sections 503, 506, 509 of this title.

§ 509. Odor management plans.

(a) Requirement.--

(1) The following operations shall develop and implement an odor management plan as described in this chapter:

(i) Existing concentrated animal operations and existing concentrated animal feeding operations, when doing any of the following:

(A) Erecting or constructing a new animal housing facility or a new manure management facility. The odor management plan required by this paragraph shall be developed and implemented only with respect to the new facility.

(B) Erecting or constructing an expansion of an animal housing facility or a manure management facility. The odor management plan required by this paragraph shall be developed and implemented only with respect to the newly erected or newly constructed portion of the facility.

(ii) Existing agricultural operations which, because of an increase, resulting from expansion or construction, in the number of animals maintained at the operation, will become regulated as either a concentrated animal operation or a concentrated animal feeding operation. The odor management plan required by this paragraph shall be developed and implemented only with respect to the newly expanded or newly constructed portion of the operation.

(iii) New agricultural operations which will be regulated as either a concentrated animal operation or a concentrated animal feeding operation.

(2) The operations described in paragraph (1)(i) and (ii) shall obtain approval of their odor management plan prior to the earlier of erection or construction of new or expanded animal housing facilities or the construction of new or expanded manure management facilities.

(b) Certification of plans.--All odor management plans and plan amendments shall be developed by odor management specialists who shall certify that the plans are in accordance with the requirements of the odor management regulations promulgated under this chapter.

(c) Reviewing entities.--Odor management plans or plan amendments required by this section shall be submitted to the commission for review and approval or, at the commission's discretion, to the appropriate local conservation district for review and approval.

(d) Plan review and approval.--Any person performing the plan review must be certified in accordance with section 508 (relating to nutrient management certification program and odor management certification program). Within 90 days of receipt of an odor management plan or plan amendment, the reviewing agency shall approve or disapprove the plan or plan amendment. Approvals shall only be granted for those plans or plan amendments which satisfy the requirements of the regulations promulgated under this chapter. Notice of determination to approve or disapprove a plan or plan amendment shall be provided in writing to the person submitting same. Notice of a determination to disapprove shall include an explanation specifically stating the reasons for disapproval. If a plan or plan amendment is disapproved, the person submitting a plan or plan amendment for the first time shall have 90 days after receipt of notice of disapproval to resubmit a revised plan or plan amendment. An existing or proposed concentrated animal

operation or concentrated animal feeding operation that submits a complete plan or plan amendment is authorized to implement the same if the reviewing agency fails to act within 90 days of submittal.

(e) Implementation.--A person required to have an odor management plan under this section shall fully implement the plan prior to commencing use of the new animal housing facility or animal manure facility.

(f) Voluntary plans.--Any agricultural operation which is not required to comply with subsection (a) may voluntarily develop an odor management plan and have it reviewed pursuant to this section. To the extent possible, the commission, the Cooperative Extension Service, the department, the Department of Environmental Protection and conservation districts shall assist and promote the development of voluntary plans.

(g) Transferability of plans.--A plan approved under this section shall be transferable to a subsequent owner of an agricultural operation upon notification thereof to the district unless the transfer results in operational changes requiring plan modification pursuant to the criteria established in this section.

(h) Effectiveness of the section.--The requirements of this section shall become mandatory 90 days following the effective date of the regulations promulgated under section 504(1.1) (relating to powers and duties of commission).

Cross References. Section 509 is referred to in section 504 of this title.

§ 510. Nutrient Management Advisory Board.

(a) Creation.--There is created the Nutrient Management Advisory Board. The board shall consist of 16 members appointed by the chairman of the commission and approved by a two-thirds vote of the commission. The members so appointed shall consist of six active commercial farm owners or operators representing the livestock, swine, meat poultry, egg poultry and dairy industry nominated by Statewide general farm organizations, one veterinary nutrition specialist, one representative from the feed industry, one representative from the fertilizer industry, one representative of local government, one representative of academia who shall be an agronomist or plant scientist faculty member of the school of agriculture of a Pennsylvania college or university, one representative of academia who shall be an animal science faculty member with an expertise in odor management from the school of agriculture of a college or university within this Commonwealth, one hydrologist, two citizen representatives who are not farmers and one environmental representative, all of whom shall have sufficient knowledge, experience or familiarity with agronomic practices, nutrient management practices or odor management practices and all of whom shall be residents of this Commonwealth. The six active commercial farm owners or operators shall be nominated in a manner that provides representation of the northwest, north central, northeast, southwest, south central and southeast regions of this Commonwealth, corresponding to the regions served by the Department of Environmental Protection regional offices. Two of the six active commercial farm owners or operators shall hold an active concentrated animal feeding operation permit as required by the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

(b) Compensation.--Board members shall not receive a salary but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties.

(c) Meetings.--A majority of the board shall constitute a quorum. All actions of the board shall be by a majority vote. The board shall meet upon the call of the commission, but not less than semiannually, to carry out its duties under this chapter. The board shall annually select a chairman and such other officers as it deems appropriate.

(d) Duties.--The board shall review and comment on all commission proposed regulations developed to implement the provisions of this chapter. The commission shall have no power to promulgate regulations under this chapter until receipt of written comments on the proposed regulations from the board or until 90 days have expired from the date when the regulations were submitted by the commission to the board for its comments. Existing regulations shall continue until modified, superseded or repealed by the commission.

(e) Term.--The term of office for each board member shall be three years except that the commission shall stagger the initial terms of the charter members such that five shall serve for one year, five shall serve for two years and six shall serve for three years. Board members may be appointed to successive terms at the discretion of the commission, provided that no member may serve more than two three-year terms.

(Oct. 24, 2018, P.L.1179, No.162, eff. 60 days)

2018 Amendment. Act 162 amended subsecs. (a) and (d). Section 3 of Act 162 provided that members of the Nutrient Management Advisory Board and members of the Agricultural Advisory Board, as of the effective date of section 3, shall continue to serve as members of their respective boards until their present terms of office expire.

Cross References. Section 510 is referred to in sections 503, 504 of this title.

§ 511. Financial assistance.

(a) Loans, grants, etc.--The commission shall, to the extent funds are available, provide financial assistance in the form of loans, loan guarantees and grants for the implementation of nutrient management plans and of odor management plans for existing agricultural operations.

(b) Criteria for eligibility.--In reviewing applications for financial assistance, the commission shall consider the following:

(1) Whether the project will improve the health, safety or environment of the people of this Commonwealth and otherwise satisfy the purposes of this chapter.

(2) The cost-effectiveness of the proposed practices in comparison with other alternatives.

(3) The applicant's ability to operate or maintain the practices in a proper manner.

(c) Issuance and terms.--Subject to this section, the commission shall issue loans and set terms applicable thereto in any manner it deems appropriate. The commission may consider such factors as it deems relevant, including current market interest rates, the financial ability of the applicant to repay and the necessity to maintain the funds created hereunder in a financially sound manner. Loans may be based on the ability to repay from future revenue to be derived from the applicant's agricultural operation, by a mortgage or other security interest or by any other fiscal manner which the commission deems appropriate. The board shall have the power to defer principal on loans for up to 12 months. The minimum rate of interest to be paid on any loan made pursuant to this section shall be 1%.

(d) Grants.--Grants shall be made available as follows:

(1) Where funds have been made available to the commission, subject to any conditions that may have accompanied the receipt of such funds.

(2) Where the commission, in its sole discretion, determines that the financial condition of the recipient is such that repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of practices without a grant.

(e) Grants and loans.--The commission shall, where it deems appropriate and to the extent financial circumstances permit, mix grant funds with loan funds.

§ 512. Nutrient Management Fund.

(a) Establishment of fund.--There is established a special nonlapsing fund in the State Treasury to be known as the Nutrient Management Fund. All fees, fines, judgments and interest collected by the commission under this chapter shall be paid into the fund. All money placed in the fund and the interest it accrues are hereby appropriated to the commission on a continuing basis for any activities necessary to meet the requirements of this chapter.

(b) Supplements to fund.--The Nutrient Management Fund may be supplemented by moneys received from the following sources:

(1) State funds appropriated to the commission.

(2) Federal funds appropriated to the commission.

(3) Proceeds from the sale of any bonds made available to the commission.

(4) Repayment of loan principal.

(5) Payment on interest loans made by the commission.

(6) Gifts and other contributions from public and private sources.

(c) Fund administration.--The commission shall have authority to adopt procedures for the use of moneys in the fund, including the creation of accounts within the fund for the purposes of administering the loan and grant programs authorized by this chapter.

(d) Status of fund.--The Nutrient Management Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).

(e) Deposit and use of funds.--No administrative action shall prevent the deposit of moneys into the fund in the fiscal year in which they are received. The funds shall only be used for the purposes authorized by this chapter and shall not be transferred or diverted to any other purpose by administrative action.

Cross References. Section 512 is referred to in sections 506, 605 of this title.

§ 513. Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter or to fail to comply with a nutrient management plan or an odor management plan.

§ 514. Civil penalties and remedies.

(a) Civil penalty.--In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted, order issued or odor management plan or nutrient management plan approved under this chapter, the commission may assess a civil penalty of not more than $500 for the first day of each offense and $100 for each additional day of continuing

violation. The factors for consideration in determining the amount of the penalty are:

(1) The gravity of the violation.
(2) The potential harm to the public.
(3) The potential effect on the environment.
(4) The willfulness of the violation.
(5) Previous violations.
(6) The economic benefit to the violator for failing to comply with this chapter.

Whenever the commission finds that a violation did not cause harm to human health or an adverse effect on the environment, the commission may issue a warning in lieu of assessing a penalty where the owner or operator, upon notice, takes immediate action to resolve the violation and come into compliance. If the commission finds the nutrient pollution or the danger of nutrient pollution or the negative impacts from odor associated with new or expanded facilities results from conditions, activities or practices which are being or have been implemented in accordance with a nutrient management plan or odor management plan developed and approved pursuant to and consistent with this chapter and the regulations developed under this chapter and which is being or has been fully implemented and maintained, the owner or operator of the agricultural operation shall be exempt from the imposition of penalties under this chapter.

(b) Collection.--In cases of inability to collect the civil penalty or failure of any person to pay all or a portion of the penalty, the commission may refer the matter to the Office of General Counsel or the Office of Attorney General which shall institute an action in the appropriate court to recover the penalty. Any penalty assessed shall act as a lien on the property of the person against whom the penalty has been assessed.

(c) Civil remedies.--In addition to any other remedies provided for in this chapter, any violation of this chapter, the rules and regulations promulgated under this chapter or any order or nutrient management plan or odor management plan approved under this chapter shall be abatable in the manner provided by law or equity for the abatement of public nuisances. In addition, in order to restrain or prevent any violation of this chapter or the rules and regulations promulgated under this chapter or any order or nutrient management plan or odor management plan approved under this chapter, suits may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, the General Counsel, the district attorney of any county, the solicitor of any municipality affected or the solicitor of any conservation district, provided that the General Counsel, district attorney or solicitor shall first serve notice upon the Attorney General of the intention to so proceed. These proceedings may be prosecuted in the Commonwealth Court or in the court of common pleas of the county where the activity has taken place, the condition exists or the public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon these courts. Except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate abatement of the nuisance, the court may in its decree fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of same.

(d) Equitable relief.--In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction, special injunction or temporary

restraining order may be issued upon the terms prescribed by the court, provided that notice of the application has been given to the defendant in accordance with the rules of equity practice. In any such proceeding the Attorney General, the General Counsel, the district attorney or the solicitor of any municipality or conservation district shall not be required to give bond. In any such proceeding, the court shall issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this chapter or is engaged in conduct which is causing immediate and irreparable harm to the public. In addition to an injunction, the court in such equity proceeding may assess civil penalties in accordance with this section.

§ 515. Limitation of liability.

If a person is fully and properly implementing a nutrient management plan or an odor management plan approved by the local conservation district or the commission and maintained under this chapter for an agricultural operation, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients or the abatement of odor impacts pursuant to the implementation.

§ 516. Enforcement authority; enforcement orders.

(a) Right of access.--A duly authorized agent of the commission or a conservation district shall have authority to enter any agricultural operation at reasonable times to conduct such investigations and to take such actions as are necessary to enforce the provisions of this chapter or any order, rule or regulation issued hereunder.

(b) Duty to grant access.--Any person owning or operating an agricultural operation shall grant access to any duly authorized agent of the commission or a conservation district pursuant to subsection (a) and shall not hinder, obstruct, prevent or interfere with such agents in the performance of their duties, provided, however, that agents shall perform such reasonable measures and actions as directed by the owner or operator of an agricultural operation as will reasonably and substantially prevent the spread or outbreak of contagious diseases.

(c) Orders.--The commission or any conservation district delegated enforcement authority may issue such orders as are necessary to aid in the enforcement of the provisions of this chapter. Any order issued under this section shall take effect upon notice unless the order specifies otherwise. An appeal of the order to the Environmental Hearing Board shall not act as a supersedeas, provided that, upon application for and cause shown, the hearing board may issue such a supersedeas under the rules established by the hearing board.

§ 517. Appealable actions.

Any person aggrieved by an order or other administrative action of the commission issued pursuant to this chapter shall have the right, within 30 days from actual or constructive notice of the action, to appeal the action to the Environmental Hearing Board.

§ 518. Powers reserved under existing laws.

Nothing in this chapter shall limit in any way whatever the powers conferred upon the commission, the department, the Department of Environmental Protection or a conservation district under laws other than this chapter, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, and the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and common

law. All such powers are preserved and may be freely exercised. A court exercising general equitable jurisdiction shall not be deprived of such jurisdiction even though a nuisance or condition detrimental to health is subject to regulation or other action by the board under this chapter.

§ 519. Preemption of local ordinances.

(a) General.--This chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management and odor management, to the exclusion of all local regulations.

(b) Nutrient management.--No ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(c) Odor management.--No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(d) Stricter requirements.--Nothing in this chapter shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this chapter and the regulations or guidelines promulgated under this chapter. No penalty shall be assessed under any such local ordinance or regulation under this subsection for any violation for which a penalty has been assessed under this chapter.

2005 Amendment. Section 5(2) of Act 38 provided that subsection (c) shall take effect on the earlier of the effective date of regulations promulgated under section 504(1.1) or the publication in the Pennsylvania Bulletin of interim guidelines under section 504(2).

§ 520. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this chapter.

§ 521. Other statutes not affected.

This chapter shall not be construed as modifying, rescinding or superseding any other statute or as regulating biosolids and shall be read in pari materia with other statutes. Nothing in this chapter shall limit in any way whatever the powers conferred upon the department, the Department of Environmental Protection and the State Conservation Commission under statutes other than this chapter. All such powers are preserved and may be freely exercised.

§ 522. Regulations.

The Department of Environmental Protection is authorized to adopt such regulations as it deems necessary to its administration and enforcement of this chapter. This includes the authority to establish, by regulation, such fees as are reasonably necessary to fund the implementation and enforcement of this chapter.

CHAPTER 6

AGRICULTURE-LINKED INVESTMENT PROGRAM

Sec.

601. Scope of chapter.
602. Legislative intent.
603. Definitions.
604. General authority of commission.
605. Agriculture-Linked Investment Program.
606. Liability.
607. Funding cap.

Enactment. Chapter 6 was added July 1, 2019, P.L.263, No.37, effective in 60 days.

Special Provisions in Appendix. See section 3 of Act 37 of 2019 in the appendix to this title for special provisions relating to continuation of prior law.

§ 601. Scope of chapter.

This chapter relates to the Agriculture-Linked Investment Program.

§ 602. Legislative intent.

It is the intent of the General Assembly that farmers be offered an incentive to use agricultural best management practices as part of an approved nutrient or odor management plan, manure management plan, agricultural erosion and sedimentation plan or Federal conservation plan to prevent nutrients from washing off farm fields and animal concentration areas and entering surface water and groundwater, to prevent soil erosion, to reduce or mitigate odor and to conserve land, water and related natural resources. These incentives shall take the form of low-interest capital in exchange for the implementation of such approved practices.

§ 603. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural erosion and sedimentation plan." An erosion and sedimentation plan established under The Clean Streams Law.

"Best management practices." A practice or combination of practices determined by the commission to be effective and practicable, given technological, economic and institutional considerations, to manage and conserve land, water and related resources and to manage nutrients to protect surface water and groundwater, taking into account applicable nutrient requirements for crop utilization. Best management practices shall include, but not be limited to:

(1) Conservation tillage.
(2) Crop rotation.
(3) Soil testing.
(4) Manure testing.
(5) Diversions.
(6) Manure storage facilities.
(7) Storm water management practices.
(8) Nutrient application.
(9) Stream bank fencing.
(10) Riparian buffers.
(11) Pasture livestock watering systems where stream bank fencing is installed.
(12) Odor barriers.
(13) Development of a voluntary nutrient or odor management plan.
(14) Manure management plans.
(15) Agricultural erosion and sedimentation plans.
(16) Federal conservation plans.

"Commission." The State Conservation Commission established by the Conservation District Law.

"Conservation District Law." The act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Eligible borrower." Any person, individual, partnership, corporation or legal entity who has an interest in property in this Commonwealth, who engages in agricultural operation in this Commonwealth, who has legal and financial responsibility for the agricultural operation and who has developed an approved nutrient management plan under Chapter 5 (relating to nutrient management and odor management), a manure management plan or an agricultural erosion and sedimentation plan or other commission-approved Federal or State conservation program or approved best management practices.

"Lending institution." Any financial institution that is authorized to issue commercial loans, is a State depository approved by the Board of Finance and Revenue and enters into an agreement with the State Treasurer for participation in the Agriculture-Linked Investment Program. The term includes any agricultural credit association affiliated with the Farm Credit Bank, a federally chartered instrumentality pursuant to the Farm Credit Act of 1971 (Public Law 92-181, 12 U.S.C. § 2001 et seq.), as amended, that enters into an agreement with the State Treasurer for participation in the Agriculture-Linked Investment Program.

"Manure management plan." A manure management plan established under The Clean Streams Law.

"Nutrient management plan." A written site-specific nutrient plan approved by the commission or its delegated agent which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established under Chapter 5.

"Odor management plan." A written site-specific plan approved by the commission or its delegated agent which incorporates best management practices to reduce or mitigate odor consistent with the criteria established under Chapter 5.

"The Clean Streams Law." The act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

§ 604. General authority of commission.

(a) Authority.--The commission shall retain and may utilize the authority established in the Conservation District Law and Chapter 5 (relating to nutrient management and odor management) as well as any other authority delegated or bestowed upon the commission in the administration of this chapter, including money appropriated, given, granted or donated to the commission for the purposes of this chapter. Nothing in this chapter shall be construed to abrogate or abridge the authority of the commission under any other statute or grant of authority.

(b) Best management practices.--

(1) The commission or the commission's delegated agent may review applications to approve the best management practice for which the applicant is seeking a loan under this chapter.

(2) The commission may vote to expand the list of best management practices to assure new technological, environmental and scientific advances and discoveries. The commission may consider and make available practices established in statute or regulation to further the purposes of this chapter. Upon establishing a new best management practice, the commission shall submit a notice to the Legislative Reference Bureau for publication in the

Pennsylvania Bulletin. A new best management practice shall take effect upon publication in the Pennsylvania Bulletin.

§ 605. Agriculture-Linked Investment Program.

(a) Eligibility.--An operator who desires to receive an Agriculture-Linked Investment Loan shall submit a loan application to a lending institution. The application shall contain information demonstrating all of the following:

(1) The applicant is an eligible borrower.

(2) The best management practice for which the applicant is seeking a loan under this chapter has been approved by the commission or the commission's delegated agent for implementation.

(3) Reasonable estimated costs for implementation of the approved best management practices sought to be funded have been provided by a project designer and concurred in by the commission or its delegated agent.

(b) Implementation of program.--The procedures applicable to the Agriculture-Linked Investment Program are as follows:

(1) A lending institution wishing to participate in this program shall enter into an investment agreement with the Commonwealth.

(2) A lending institution shall accept and review applications for loans from eligible borrowers.

(3) A lending institution shall apply all usual lending standards, practices and forms to determine the creditworthiness of each eligible borrower.

(4) Upon the lending institution's approval of an eligible borrower's loan application, the lending institution shall submit to the State Treasurer a request for the transfer of Agriculture-Linked Investment Loan money in an amount equivalent to the amount of the loan approved, along with the application and any supporting documents filed in accordance with subsection (a).

(5) The State Treasurer shall review the submitted request for the transfer of money and any supporting documentation for completeness prior to the transfer of Agriculture-Linked Investment Loan money to the lending institution.

(6) Upon determination of the completeness of the request for money and supporting documentation, the State Treasurer shall transfer to the lending institution money equivalent to the amount of the loan approved as follows:

(i) if the lending institution is a State depository, the State Treasurer shall deposit the money in a collateralized certificate of deposit in the name of the Commonwealth which, except as provided in this chapter, conforms to the legal requirements for deposits in State depositories; or

(ii) if the lending institution is an agricultural credit association affiliated with the Farm Credit Bank, the State Treasurer shall invest the money in bonds, notes, debentures or other obligations or securities issued by the Farm Credit Bank.

(7) The interest rate payable by lending institutions with respect to Agriculture-Linked Investment Loan money shall be the interest rate on deposits in State depositories as established by the Board of Finance and Revenue from time to time, as otherwise provided by law, reduced by any subsidy that the commission may agree to pay under this chapter.

(8) Principal balances of Agriculture-Linked Investment Loan money with each lending institution shall be adjusted periodically as follows:

(i) If the lending institution is a State depository, the principal amount of the certificate of deposit shall be adjusted not less than semiannually to reflect the reduction of the principal outstanding on the loan. The interest earned plus an amount equal to the principal repaid by the borrower shall be remitted not less than semiannually by the lending institution to the State Treasurer.

(ii) If the lending institution is an agricultural credit association in conjunction with the Farm Credit Bank, the face value of the bonds, notes, debentures or other obligations or securities outstanding shall, at the option of the State Treasurer, be periodically reduced by payment or redemption to match as nearly as possible the amount of principal outstanding on program loans, and the interest earned shall be payable to the State Treasurer as due in accordance with the terms of the bonds, notes, debentures or other obligations or securities.

(c) Terms of loan for borrowers.--The terms of the loans for borrowers shall be:

(1) Loans shall not exceed $250,000.

(2) Loans shall be amortized over a term not to exceed 12 years.

(3) The interest rate shall be established at or prior to the approval of the eligible borrower's loan application.

(4) The interest rate charged by a lending institution to an eligible borrower shall reflect a percentage rate reduction below the prevailing market loan interest rate otherwise applicable to the borrower that is equal to the percentage rate reduction, if any, below the rate set by the Board of Finance and Revenue at which the certificates of deposit associated with the loan are placed or at which the investment in bonds, notes, debentures or other obligations or securities of the Farm Credit Bank associated with the loan are made.

(5) The interest rate charged by a lending institution to an eligible borrower may be either a fixed rate for the entire term of the loan or a variable rate which shall be adjusted semiannually to reflect changes in the interest rate established by the Board of Finance and Revenue for deposits in State depositories as otherwise provided by law.

(6) Except as modified by the requirements of this chapter, a lending institution may apply its usual policies and practices with respect to the administration, collection and enforcement of loans issued under this chapter.

(d) Interest subsidy.--

(1) The commission, at the commission's discretion, may enter into an agreement with the State Treasurer to subsidize the interest rate charged to eligible borrowers under this program with money provided to the commission under section 4(6) of the Conservation District Law or section 512 (relating to Nutrient Management Fund).

(2) Under the agreement, the commission may designate from time to time a block of loans of a certain aggregate dollar amount which the commission wishes to subsidize and shall deposit in advance into a restricted escrow account in the State Treasury an amount estimated by the State Treasurer to be sufficient to make the yield over a 12-year term on the Agriculture-Linked Investment Loan money to be transferred to lending institutions in connection with each designated block of subsidized loans equivalent to the yield

the money otherwise would have earned at interest rates established from time to time by the Board of Finance and Revenue for deposits in State depositories as otherwise provided by law. Withdrawals from the restricted escrow account shall be made by the State Treasurer at the times when interest becomes due and payable from lending institutions on Agriculture-Linked Investment Loan money associated with subsidized loans.

(3) Among its terms, the agreement shall contain provisions:

(i) To require the deposit of additional money into the restricted escrow account when the parties agree that the account balance has become insufficient to fully fund the subsidy.

(ii) To permit the withdrawal of money from the escrow account when the parties agree that the account balance exceeds the amount needed to fully fund the subsidy.

(4) The amount to be deposited into the restricted escrow account as to each block of loans designated by the commission shall be determined by calculating that the loans will be amortized over 12 years at a fixed rate of interest which is a number of percentage points below the prevailing market interest rate for such loans, to be designated by the commission.

§ 606. Liability.

(a) Immunity.--The Commonwealth, the State Treasurer and the commission shall not be liable to a lending institution in any manner for payment of the principal or interest on the loan made to an eligible borrower.

(b) Loss of subsidy upon default.--A default by an eligible borrower in repayment of an Agriculture-Linked Investment Loan shall result in the loss of the subsidy provided under this chapter, in which case the interest rate payable by the lending institution shall revert to the interest rate on deposits as established by the Board of Finance and Revenue from time to time as otherwise established by law. As used in this subsection, the term "default" means a loan which is more than 90 days in arrears on payments.

(c) Availability of funding.--The subsidy provided by this chapter shall continue only so long as the commission furnishes money to pay for it. In the event funding is exhausted or otherwise unavailable, the interest rate payable by lending institutions shall revert to the interest rate on deposits in State depositories as established from time to time by the Board of Finance and Revenue as otherwise provided by law.

§ 607. Funding cap.

The aggregate amount of Agriculture-Linked Investment loans issued under this chapter shall not exceed $25,000,000 outstanding at any one time.

CHAPTER 7
INDUSTRIAL HEMP RESEARCH

Sec.

701. Scope of chapter.
702. Definitions.
703. Administration.
704. Growth and cultivation.
705. Control orders.
706. Noncriminal offense.
707. Criminal and civil penalties.

708. Disposition of funds.
709. Abrogation of regulation.
710. Expiration.

Enactment. Chapter 7 was added July 20, 2016, P.L.822, No.92, effective upon publication of the notice under section 703(a)(2), unless otherwise noted.

§ 701. Scope of chapter.

This chapter relates to industrial hemp research.

§ 702. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural pilot program." A pilot program to study the growth, cultivation or marketing of industrial hemp.

"Control order." A written order issued by the department to a person establishing required treatment measures, including destruction, for a violation of a provision of this chapter or a regulation, permit or order issued under this chapter.

"Department." The Department of Agriculture of the Commonwealth.

"Industrial hemp." The plant Cannabis sativa L. and any part of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry-weight basis.

"Institution of higher education." As defined by section 101 of the Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219).

"Secretary." The Secretary of Agriculture of the Commonwealth.

§ 703. Administration.

(a) Department.--The department has the following duties:

(1) Implement this chapter.

(2) Establish, through permits, a certification and registration program under this chapter and, when the program is operative, transmit notice of that fact to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(b) Powers and duties.--The department shall have the following powers and duties:

(1) Notwithstanding any other law to the contrary, to regulate and permit industrial hemp under this chapter in a manner consistent with the provisions of this chapter and all Federal laws, regulations and orders.

(2) To establish, implement and administer an agricultural pilot program to the extent funds are available.

(3) To develop and implement permitting requirements, and regulations if necessary, to carry out the provisions of this chapter.

(4) To issue, renew, deny, revoke, suspend or refuse to renew permits to conduct an agricultural pilot program.

(5) To develop an application for registration.

(6) To develop an application for permits.

(7) To create and maintain a database of permitted institutions of higher education and sites used to grow or cultivate industrial hemp.

(8) To inspect the facilities, growing areas, fields, seeds, plants and other items used by each permitted entity to ensure compliance with this chapter and permitting requirements and regulatory standards if promulgated, including conducting or requiring testing of seeds, plants and plant materials at the permit holder's cost.

(9) To establish, through permit, restrictions for the use or reuse of seeds, crops or products produced as the end result of an agricultural pilot program.

(10) To establish reasonable permitting and inspection fees to cover the cost of administration of this chapter.

(11) Notwithstanding any provision of Chapter 71 (relating to seed) and its attendant regulations, to regulate the labeling and testing of industrial hemp and industrial hemp seeds within this Commonwealth.

(12) To establish, through permitting standards or regulation, recordkeeping requirements necessary to administer the provisions of this chapter.

(c) Secretary.--If the secretary determines that a Federal agency is authorized to regulate industrial hemp, the secretary shall transmit notice of that authorization to the bureau for publication in the Pennsylvania Bulletin.

Effective Date. Section 3(1)(i) of Act 92 of 2016 provided that subsec. (a) shall take effect immediately.

Cross References. Section 703 is referred to in section 710 of this title.

§ 704. Growth and cultivation.

(a) Authorization.--Industrial hemp may be grown or cultivated by the department or an institution of higher education for the purposes of research conducted under an agricultural pilot program in compliance with subsection (b), notwithstanding:

(1) The Controlled Substances Act (Public Law 91-513, 84 Stat. 1236, 21 U.S.C. § 801 et seq.).

(2) (Reserved).

(3) 41 U.S.C. Ch. 81 (relating to drug-free workplace).

(4) Section 4(1)(vii)1 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(5) 18 Pa.C.S. § 7508(a)(1) (relating to drug trafficking sentencing and penalties).

(6) Any other Federal law or State law.

(b) Manner.--Industrial hemp shall be grown or cultivated in a manner that complies with all of the following:

(1) Except as provided under subsection (c), only institutions of higher education and the department may grow or cultivate industrial hemp.

(2) Sites used for growing or cultivating industrial hemp must be certified, inspected and permitted by and registered with the department. The failure to permit inspection by the department shall be a violation of this chapter.

(c) Contracted growers.--

(1) The department, to the extent necessary to carry out the provisions of an agricultural pilot program, may contract with a person to grow or cultivate industrial hemp.

(2) An institution of higher education holding a permit from the department, to the extent necessary to carry out the provisions of an agricultural pilot program, may contract with a person to grow or cultivate industrial hemp.

(3) A contract between an institution of higher education and a person must incorporate the provisions of the permit issued to the institution of higher education and must require written approval from the department.

(4) A person with a contract to grow or cultivate industrial hemp must provide the following information:

(i) The name and mailing address of the person.

(ii) The legal description and global positioning coordinates sufficient to locate each site to be used to grow or cultivate industrial hemp.

(iii) A signed declaration indicating whether the person has ever been convicted of a felony or misdemeanor.

(5) A person with a contract under this subsection is subject to a grant of necessary permissions, waivers or other form of valid legal status by the United States Drug Enforcement Administration or other appropriate Federal agency pursuant to Federal laws relating to industrial hemp. The department may seek all-inclusive permissions, waivers or other forms of valid legal status from the United States Drug Enforcement Administration or other appropriate Federal agency pursuant to Federal laws relating to industrial hemp for all persons with a contract to grow or cultivate industrial hemp.

(6) Each contracted grower shall submit fingerprints to the Pennsylvania State Police for the purpose of obtaining criminal history record checks. The Pennsylvania State Police or its authorized agent shall submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions. Any criminal history record information relating to contracted growers obtained under this paragraph by the department may be interpreted and used by the department only to determine the applicant's character, fitness and suitability to serve as contracted growers under this chapter.

(7) A person with a felony drug conviction within the past 10 years may not contract to grow or cultivate industrial hemp under this subsection.

§ 705. Control orders.

(a) Authority of department.--

(1) The department may issue a control order:

(i) Requiring any person registered and permitted to grow industrial hemp to implement treatment measures for industrial hemp if the department finds that the person has violated a provision of this chapter or a regulation, order or permitting requirement issued under this chapter.

(ii) Upon finding industrial hemp growing on any premises or property without a valid registration or permit.

(2) A control order shall set forth the general factual and legal basis for the action and shall advise the affected person that within 15 days of receipt of the control order the person may file with the department a written request for an administrative hearing.

(3) The hearing under paragraph (2) shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure). The written control order of the department shall be served upon the affected person by personal service or by registered or certified mail, return receipt requested. The control order shall become final upon the expiration of the 15-day period for requesting an administrative hearing unless a timely request for a hearing has been filed with the department.

(b) Required contents.--The control order shall prescribe the required remediation, control, eradication or treatment measures and the date by which the measures must be completed.

(c) Expenses and costs.--The department may recover any expenses and costs incurred in enforcing and carrying out the measures established in the control order from the person that was the subject of the department's control order.

§ 706. Noncriminal offense.

An activity conducted in compliance with this chapter shall not be in violation of the laws of the Commonwealth including:

(1) The act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) 18 Pa.C.S. § 7508(a)(1) (relating to drug trafficking sentencing and penalties).

(3) Any other law of the Commonwealth regulating the growth or cultivation of industrial hemp.

§ 707. Criminal and civil penalties.

(a) Penalties authorized.--In addition to any criminal penalty that may apply if a person is operating outside the requirements of this chapter or a permit, rule or regulation promulgated under this chapter, the department may impose the penalties under this section.

(b) Criminal penalties.--The following shall apply:

(1) A person commits a summary offense if the person:

(i) violates a provision of this chapter or a permit, rule or regulation promulgated under this chapter; or

(ii) impedes, obstructs, hinders or otherwise prevents or attempts to prevent the department in the performance of its duty in connection with a provision of this chapter or a permit, rule or regulation promulgated under this chapter.

(2) Upon conviction of an offense under paragraph (1), the person shall be sentenced to pay a fine of:

(i) Not less than $100 nor more than $300 for the first violation.

(ii) Not less than $500 nor more than $1,000 for a subsequent violation that occurs within one year of the first conviction.

(c) Civil penalties.--The following shall apply:

(1) In addition to any other remedy available at law or in equity for a violation of this chapter or a permit, rule or regulation promulgated under this chapter, the department may assess upon a person a civil penalty of not more than $5,000, plus the cost of remediation, containment or eradication, for each violation of this chapter, a permit, rule or regulation promulgated under this chapter or an order issued under the authority of this chapter.

(2) A civil penalty assessed under this subsection shall be payable to the department.

(3) The amount of the civil penalty under this subsection shall be collectible in a manner provided by law for the collection of debt, including referral of the collection matter to the Office of Attorney General, which shall recover the amount by action in the appropriate court.

(4) A civil penalty may not be assessed unless the person subject to the penalty has been given notice and an opportunity for a hearing on the assessment in accordance with the provisions of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(d) Civil remedy.--The following shall apply:

(1) In addition to any other remedy provided for in this chapter, at the request of the secretary, the Attorney

General may initiate, in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business, an action in equity for an injunction to restrain a violation of this chapter, a permit, rule or regulation promulgated under this chapter or an order of the department from which no timely appeal has been taken or sustained on appeal.

(2) In a proceeding under paragraph (1), upon motion of the Commonwealth, the court shall issue a preliminary injunction if it finds that the defendant is engaging in conduct that is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with the proceeding. In addition to an injunction, the court may levy a civil penalty as provided for under this chapter.

§ 708. Disposition of funds.

(a) Deposit of funds.--All fees, fines and penalties collected under this chapter shall be paid into a subaccount in a special restricted account in the General Fund known as the Plant Pest Management Account and shall be appropriated by the General Assembly to the department for the purpose of this chapter. The money in the subaccount shall not replace revenues appropriated to the fund as allowed under subsection (b).

(b) Supplement to account.--The subaccount in the Plant Pest Management Account may be supplemented by:

(1) Funds appropriated from the General Assembly to the department for purposes of this chapter.

(2) Federal funds appropriated to the department for purposes of this chapter.

(3) Gifts and other contributions from public or private sources for purposes of this chapter.

§ 709. Abrogation of regulation.

The provisions of 7 Pa. Code § 110.1(1) (relating to noxious weed control list) are abrogated.

§ 710. Expiration.

This chapter shall expire upon publication in the Pennsylvania Bulletin of the notice under section 703(c) (relating to administration).

CHAPTER 9
PENNSYLVANIA DAIRY FUTURE COMMISSION

Sec.

901. Scope of chapter.
902. Definitions.
903. Establishment.
904. Duties.
905. Membership.
906. Meetings.
907. Payments to members.
908. Administrative support.
909. Additional powers and duties.

Enactment. Chapter 9 was added July 2, 2019, P.L.403, No.66, effective in 30 days.

§ 901. Scope of chapter.

This chapter relates to the Pennsylvania Dairy Future Commission.

§ 902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commission." The Pennsylvania Dairy Future Commission established in this chapter.

§ 903. Establishment.

The Pennsylvania Dairy Future Commission is established.

§ 904. Duties.

The commission shall review and make recommendations to promote and strengthen the Commonwealth's dairy industry in the following areas:

(1) Processing, production and marketing in the dairy industry.

(2) Current issues facing the dairy industry.

(3) Statutory impacts on the dairy industry.

(4) Regulatory impacts on the dairy industry.

(5) Local government impacts on the dairy industry.

(6) Other aspects of the dairy industry identified by the commission.

§ 905. Membership.

(a) General rule.--The commission shall consist of the following members:

(1) One individual appointed by the Governor.

(2) The Secretary of Agriculture or a designee.

(3) The Secretary of Community and Economic Development or a designee.

(4) The Secretary of Revenue or a designee.

(5) The Secretary of Transportation or a designee.

(6) The Secretary of Environmental Protection or a designee.

(7) One individual appointed by the President pro tempore of the Senate.

(8) One individual appointed by the Speaker of the House of Representatives.

(9) Two individuals appointed by the Majority Leader of the Senate.

(10) One individual appointed by the Minority Leader of the Senate.

(11) Two individuals appointed by the Majority Leader of the House of Representatives.

(12) One individual appointed by the Minority Leader of the House of Representatives.

(13) The chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate or a designee.

(14) The chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives or a designee.

(15) A representative of the Milk Marketing Board.

(16) A representative of the Center for Dairy Excellence.

(17) A representative of The Pennsylvania State University with expertise in the dairy industry.

(18) A representative of the Pennsylvania Farm Bureau with expertise in the dairy industry.

(19) A representative of the Center for Rural Pennsylvania.

(20) A representative of the Pennsylvania State Grange.

(b) Chairperson.--The commission shall appoint a member to serve as chairperson of the commission.

§ 906. Meetings.

The commission shall hold its first meeting within 45 days of the effective date of this section, regardless of whether all legislative caucuses have appointed members to the commission. The commission shall hold meetings at the call of the chairperson.

§ 907. Payments to members.

Members may not receive compensation for services, but shall be reimbursed for all necessary travel and other reasonable expenses incurred in connection with the performance of the members' duties as members of the commission.

§ 908. Administrative support.

The Department of Agriculture shall provide administrative support, meeting space and any other assistance required by the commission to carry out the commission's duties under this chapter. The department shall provide the commission with data, research and other information upon request by the commission.

§ 909. Additional powers and duties.

The commission shall have the following powers and duties:

(1) Review, make findings and offer recommendations related to the dairy industry in this Commonwealth.

(2) Consult with and utilize experts to assist the commission in carrying out the duties under this section.

(3) Receive input from interested parties.

(4) Hold public hearings in different regions of this Commonwealth.

(5) Review and consider dairy policies and factors utilized throughout the United States.

(6) Review the administration and operation of State and regional programs and services and make recommendations to implement new policies, legislation and regulations.

(7) Recommend proposed legislation and regulatory changes based on the commission's findings.

(8) Issue a report of the commission's findings and recommendations to the Governor, the Majority Leader and Minority Leader of the Senate, the Majority Leader and Minority Leader of the House of Representatives, the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate and the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives not later than one year after the effective date of this section.

CHAPTER 11
FIREWORKS

Sec.

1101. Definitions.
1102. Use of display fireworks.
1103. (Reserved).
1104. Use of consumer fireworks.
1105. Agricultural purposes.
1106. Rules and regulations by municipality.
1107. Sales locations.
1108. Fees, granting of licenses and inspections.
1108.1. Refusal, suspension or revocation of license.
1109. Conditions for facilities.
1110. (Reserved).
1111. Attorney General.
1112. Consumer fireworks tax.
1113. Disposition of certain funds.
1114. Penalties.

1115. Removal, storage and destruction.

Enactment. Chapter 11 was added July 11, 2022, P.L.762, No.74, effective in 60 days.

Special Provisions in Appendix. See section 3 of Act 74 of 2022 in the appendix to this title for special provisions relating to continuation of prior law.

§ 1101. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Animal housing facility." A roofed structure or facility, or a portion of the facility, used for occupation by livestock or poultry.

"APA 87-1." The American Pyrotechnics Association Standard 87-1: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, 2001 edition.

"Consumer fireworks."

(1) The term includes any combustible or explosive composition or any substance or combination of substances which is intended to produce visible or audible effects by combustion, is suitable for use by the public, complies with the construction, performance, composition and labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR (relating to commercial practices) or any successor regulation and complies with the provisions for "consumer fireworks" as defined in APA 87-1, the sale, possession and use of which shall be permitted throughout this Commonwealth.

(2) The term does not include devices such as "ground and hand-held sparkling devices," "novelties" or "toy caps" in APA 87-1, the sale, possession and use of which shall be permitted at all times throughout this Commonwealth.

"Display fireworks." As defined in 27 CFR 555.11 (relating to meaning of terms).

"Municipality." A city, borough, incorporated town or township.

"NFPA 1124." (Deleted by amendment).

"Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

"Vehicle." Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.

(Nov. 1, 2023, P.L.159, No.23, eff. imd.)

2023 Amendment. Act 23 deleted the def. of "NFPA 1124."

§ 1102. Use of display fireworks.

(a) Prohibition.--No display fireworks shall be ignited within 300 feet of a facility that meets the requirements of section 1107 (relating to sales locations).

(b) Permit.--Permission shall be given by the governing body of a municipality under reasonable rules and regulations for displays of display fireworks to be held within the municipality. After permission is granted, purchase, possession and use of display fireworks shall be lawful for the use outlined in the permit only. Permits shall not be transferable.

(c) Limitations.--Each use of display fireworks shall be:

(1) handled by a competent operator at least 21 years of age who demonstrates evidence of fireworks handling and safety training; and

(2) of a character and so located, discharged or fired as, in the opinion of the chief of the fire department or other appropriate officer as may be designated by the governing body of the municipality, after proper inspection, to not be hazardous to property or endanger any person.

(d) Insurance.--The governing body of the municipality shall require a permittee to carry insurance in an amount not less than $1,000,000 conditioned for the payment of all damages which may be caused to a person or property by reason of the use of display fireworks and arising from an act of the permittee or an agent, an employee or a subcontractor of the permittee.

(e) Permit extension.--A municipality may grant an extension for a permit issued under this section to a new date for displays canceled due to unfavorable weather or other circumstances beyond the control of the permittee.

§ 1103. (Reserved).

§ 1104. Use of consumer fireworks.

(a) Conditions.--A person who is at least 18 years of age may purchase, possess and use consumer fireworks.

(b) Prohibitions.--A person may not intentionally use consumer fireworks:

(1) On private property or on public property, including, but not limited to, streets, parking lots, sidewalks and parks, without the express permission of the owner or entity that controls the property.

(2) Within, directed at or directed from a vehicle or building.

(3) Directed at another person.

(4) While the person is under the influence of alcohol, a controlled substance or another drug.

(5) Within 150 feet of a building or vehicle, whether or not the building or vehicle is owned by the user of the consumer fireworks.

(c) Conditional use.--No person may use consumer fireworks within 150 feet of an animal housing facility or a fenced area designed to confine livestock owned or managed by another person. If a person uses consumer fireworks at a distance of 150 to 300 feet from an animal housing facility or fenced area designed to confine livestock owned or managed by another person, the user of consumer fireworks shall notify in writing the owner or manager of the livestock at least 72 hours in advance of the use that consumer fireworks will be used in the area.

Cross References. Section 1104 is referred to in sections 1106, 1109 of this title.

§ 1105. Agricultural purposes.

(a) Authorization.--The governing body of a municipality may, under reasonable rules and regulations adopted by it, grant permits for the use of display fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.

(b) Duration of permit.--A permit under this section shall remain in effect for the calendar year in which it was issued.

(c) Conditions.--After a permit under this section has been granted, sales, possession and use of display fireworks for the purpose mentioned in the permit shall be lawful for that purpose only.

§ 1106. Rules and regulations by municipality.

(a) Authorization.--

(1) Except for the limitations under subsection (b), a municipality may enact conditions, prohibitions and limitations on the use and sale of consumer fireworks that are not in conflict with this chapter.

(1.1) Except for the limitations under subsection (b), a municipality may require a permit for the use of consumer fireworks. A fee for a permit shall be reasonable.

(1.2) A municipality may prohibit the use of consumer fireworks if the use of the consumer fireworks within the municipality cannot comply with section 1104(b)(5) (relating to use of consumer fireworks).

(2) Facilities with a valid license issued by the department under section 1108(a) or (e) (relating to fees, granting of licenses and inspections) prior to or within one year following the effective date of this section shall not be subject to municipal conditions, prohibitions or limitations enacted under paragraph (1) related to the sale of consumer fireworks.

(3) Except for the limitations under subsection (b), a municipality may enact the following restrictions on the use of consumer fireworks: Consumer fireworks may not be used between the hours of 10:00 p.m. and 10:00 a.m., except:

(i) on July 2, 3 and 4 and December 31, when consumer fireworks may be used until 1:00 a.m. the following day; and

(ii) when July 4 falls on a Tuesday, Wednesday or Thursday, consumer fireworks may be used until 1:00 a.m. on the immediately preceding and following Friday and Saturday.

(b) Limitations.--Except for authority exercised under subsection (a)(1.2), no municipality shall restrict or regulate the use of consumer fireworks on the following days:

(1) The days listed in subsection (a)(3)(i) and (ii).

(2) Memorial Day, including the immediately preceding Saturday and Sunday.

(3) Labor Day, including the immediately preceding Saturday and Sunday.

§ 1107. Sales locations.

Consumer fireworks shall be sold only from facilities which are licensed by the Department of Agriculture and that meet the following criteria:

(1) The facility shall comply with the provisions of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.

(2) The facility shall be a stand-alone, permanent structure.

(3) Storage areas shall be separated from wholesale or retail sales areas to which a purchaser may be admitted by appropriately rated fire separation.

(4) For a facility issued a license under section 1108(a) (relating to fees, granting of licenses and inspections), the facility shall be located no closer than 300 feet from a facility selling or dispensing gasoline, propane or other flammable products.

(5) For a facility issued a license under section 1108(a), the facility shall be located at least 2,500 feet from another facility licensed to sell consumer fireworks.

(6) The facility shall have a monitored burglar and fire alarm system.

(7) Quarterly fire drills and preplanning meetings shall be conducted as required by the primary fire department.

(8) (Reserved).

(9) The sale of consumer fireworks may be conducted through online, mail-order or other transaction, but delivery of consumer fireworks to a purchaser shall take place at a facility licensed under section 1108 and the sale shall be subject to the provisions of section 1112 (relating to consumer fireworks tax).

(Nov. 1, 2023, P.L.159, No.23, eff. imd.)

2023 Amendment. Act 23 amended par. (8).

Cross References. Section 1107 is referred to in sections 1102, 1108 of this title.

§ 1108. Fees, granting of licenses and inspections.

(a) Initial application fees.--

(1) An initial application for a license to sell consumer fireworks shall be submitted to the Department of Agriculture on forms prescribed and provided by the department with a nonrefundable application fee as follows:

(i) For a facility meeting the requirements of section 1107 (relating to sales locations), the application shall be submitted with a nonrefundable application fee of $2,500.

(ii) (Reserved).

(2) An application under paragraph (1) shall also be accompanied by the appropriate annual license fee as provided in subsection (b).

(b) Annual license fees.--The annual license fee for a facility licensed to sell consumer fireworks shall be as follows:

(1) $7,500 for a location up to 10,000 square feet;

(2) $10,000 for a location greater than 10,000 and up to 15,000 square feet; and

(3) $20,000 for a location greater than 15,000 square feet.

(c) Time limitations and inspections.--

(1) A facility meeting the requirements of section 1107 shall be inspected by the Department of Agriculture within 30 days of receipt of a complete application for a license. The Department of Agriculture shall issue or deny a license within 14 days of completing the inspection.

(2) (Reserved).

(d) Term of license.--A license issued for the sale of consumer fireworks shall be effective for one year from the date the license is issued.

(e) License renewal and inspections.--License renewal shall be automatic upon submission of a renewal application, proof of insurance under section 1109(5) (relating to conditions for facilities) and payment of the appropriate annual license fee under subsection (b), but each facility shall be subject to annual inspections by the Department of Agriculture and at other times as the department may deem appropriate. The department shall transmit an application for renewal to a licensee in such time to provide for submission within 30 days prior to the expiration of a license.

(f) Condition.--No license may be issued to a convicted felon or to an entity in which a convicted felon owns a percentage of the equity interest.

Cross References. Section 1108 is referred to in sections 1106, 1107, 1108.1, 1109, 1112, 1114 of this title.

§ 1108.1. Refusal, suspension or revocation of license.

(a) Authority.--The department may refuse, suspend or revoke a license issued or renewed under section 1108 (relating to fees, granting of licenses and inspections) if the licensee is not in compliance with the provisions of this chapter.

(b) Appeals.--The department shall provide an opportunity for a hearing to a person appealing an action of the department under subsection (a). All appeals shall be taken and hearings conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action). A person shall have 15 days to appeal an enforcement action of the department under subsection (a).

§ 1109. Conditions for facilities.

A facility licensed by the Department of Agriculture under section 1108 (relating to fees, granting of licenses and inspections) shall be exclusively dedicated to the storage and sale of consumer fireworks and related items, and the facility shall operate in accordance with the following rules:

(1) There shall be security personnel on the premises for the seven days preceding and including July 4 and on December 31.

(2) No smoking shall be permitted in the facility.

(3) No cigarettes or tobacco products, matches, lighters or any other flame-producing devices shall be permitted to be taken into the facility.

(4) No minors shall be permitted in the facility unless accompanied by an adult, and each minor shall stay with the adult in the facility.

(5) All facilities shall carry at least $2,000,000 in public and product liability insurance.

(6) A licensee shall provide its employees with documented training in the area of operational safety of a facility. The licensee shall provide to the Department of Agriculture written documentation that each employee has received the training.

(7) No display fireworks or federally illegal explosives under 49 CFR 173.54 (relating to forbidden explosives) shall be stored or located at a facility.

(8) No person who appears to be under the influence of intoxicating liquor or drugs shall be admitted to the facility, and no liquor, beer or wine shall be permitted in the facility.

(9) Emergency evacuation plans shall be conspicuously posted in appropriate locations within the facility.

(10) Written notice shall be conspicuously posted or provided with each purchase of consumer fireworks that provides the conditions and prohibitions for use of consumer fireworks under section 1104 (relating to use of consumer fireworks) and that additional conditions, prohibitions and limitations may be implemented by a municipality.

Cross References. Section 1109 is referred to in section 1108 of this title.

§ 1110. (Reserved).

§ 1111. Attorney General.

An individual or entity which performs, provides or supervises consumer fireworks or display fireworks displays or exhibitions for profit shall register annually with the Attorney General in accordance with 37 Pa. Code Ch. 711 (relating to registration for fireworks displays). A certificate of

registration issued by the Attorney General shall be provided upon request by law enforcement officials.
(Nov. 1, 2023, P.L.159, No.23, eff. imd.)

§ 1112. Consumer fireworks tax.

(a) Imposition.--In addition to any other tax imposed by law, a tax is imposed on each separate sale at retail of consumer fireworks, which tax shall be collected by the retailer from the purchaser at the time of sale and shall be paid over to the Commonwealth as provided in this section. A tax imposed under this subsection on each separate sale at retail shall be paid to and received by the Department of Revenue and, along with interest and penalties, shall be deposited into the General Fund.

(b) Rate.--The tax authorized under subsection (a) shall be imposed and collected at the rate of 12% of the purchase price per item sold. The purchase price shall not include State and local sales taxes.

(c) Collection and administration.--The provisions of Part VI of Article II of the Tax Reform Code shall apply to the tax authorized under subsection (a). No additional fee shall be charged for a license or license renewal other than the license or annual license fee required under section 1108 (relating to fees, granting of licenses and inspections) and the license or renewal fee authorized and imposed under Article II of the Tax Reform Code.

Cross References. Section 1112 is referred to in sections 1107, 1113 of this title.

§ 1113. Disposition of certain funds.

(a) Transfer.--The tax collected under section 1112(b) (relating to consumer fireworks tax) in each fiscal year shall be transferred annually for use as follows:

(1) $1,500,000 of the amount transferred under this subsection shall be used for the purpose of making grants under 35 Pa.C.S. Ch. 78 Subch. C (relating to Emergency Medical Services Grant Program).

(2) $250,000 of the amount transferred under this subsection shall be deposited into a special account in the State Treasury designated as the Online Training Educator and Training Reimbursement Account for the purposes of developing, delivering and sustaining training programs for firefighters in this Commonwealth.

(3) $1,000,000 of the amount transferred under this subsection shall be transferred to the Pennsylvania Higher Education Assistance Agency to provide loan forgiveness and tuition assistance to active volunteer firefighters and volunteer emergency medical services providers serving with volunteer organizations who are students at or graduates of approved trade and technical schools and institutions of higher learning.

(4) $1,000,000 of the amount transferred under this subsection shall be transferred to the Department of Health for the purpose of training emergency medical services personnel.

(5) $500,000 of the amount transferred under this subsection shall be transferred to the Office of the State Fire Commissioner for the purpose of providing emergency services training center capital grants.

(6) $500,000 of the amount transferred under this subsection shall be transferred to the Office of the State Fire Commissioner for the purpose of providing career fire department capital grants.

(7) $250,000 of the amount transferred under this subsection shall be transferred to the Office of the State Fire Commissioner for the purpose of providing a public safety campaign on the precautions that should be taken when using fireworks.

(7.1) $500,000 of the amount transferred under this subsection shall be transferred to the Office of the State Fire Commissioner for the purpose of providing reimbursement to a Pennsylvania bomb squad accredited by the Federal Bureau of Investigation and certified in hazardous devices training for costs associated with the removal, storage and destruction of consumer fireworks, display fireworks or combustibles under section 1115 (relating to removal, storage and destruction). Any money not used annually by September 10 for the purpose specified under this paragraph shall be subject to paragraph (8).

(8) Any remaining money shall be equally divided and transferred as follows:

(i) 50% of the amount shall be transferred in accordance with paragraph (1).

(ii) 50% of the amount shall be used for the purpose of making grants under 35 Pa.C.S. Ch. 78 Subch. B (relating to Fire Company Grant Program).

(9) The Office of the State Fire Commissioner shall establish guidelines for use of the money deposited or transferred under paragraphs (2), (5), (6) and (7). By December 31, 2022, and each December 31 thereafter, the Office of the State Fire Commissioner shall provide a written report detailing the use of the money received from the prior fiscal year to the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate, the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the Senate and the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives.

(b) Payments.--The transfer required under subsection (a) shall be made by September 15, 2022, and each September 15 thereafter.

(c) Limitation on certain transferred money.--Money transferred under subsection (a)(3), (4), (5), (6) or (7.1) shall not be expended until legislation is enacted providing for the expenditure of the money.

Cross References. Section 1113 is referred to in sections 7383, 7385.1, 7385.2, 7388.1, 7389, 79B21, 8112.1 of Title 35 (Health and Safety).

§ 1114. Penalties.

The following shall apply:

(1) A person using consumer fireworks in violation of the provisions of this chapter for the first offense commits a summary offense and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not more than $500. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a summary offense and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not more than $1,000.

(2) A person selling consumer fireworks in violation of the provisions of this chapter for the first offense commits a misdemeanor of the second degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than $10,000. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a misdemeanor of the second degree and, upon conviction, in addition to any other penalty authorized by law, shall be punishable by a fine of not less than $15,000 and a revocation of a license issued under section 1108 (relating to fees, granting of licenses and inspections).

(3) A person selling or using display fireworks in violation of the provisions of this chapter for the first offense commits a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than $10,000. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than $15,000.

(4) A person selling federally illegal explosives such as devices as described in 49 CFR 173.54 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as M-80, M-100, blockbuster, cherry bomb or quarter-stick or half-stick explosive devices, in violation of the provisions of this chapter for the first offense commits a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than $10,000. A subsequent offense under this paragraph committed within three years of a prior conviction under this paragraph shall constitute a felony of the third degree and, upon conviction, shall, in addition to any other penalty authorized by law, be punishable by a fine of not less than $15,000.

§ 1115. Removal, storage and destruction.

(a) Authority.--The Pennsylvania State Police, a municipal police officer as defined in 42 Pa.C.S. § 8951 (relating to definitions) who holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training), a sheriff or a deputy or a member of a Pennsylvania bomb squad accredited by the Federal Bureau of Investigation and certified in hazardous devices training shall take, remove or cause to be removed at the expense of the owner all stocks of consumer fireworks or display fireworks or combustibles offered or exposed for sale, used, stored or held in violation of this chapter. The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.

(b) Cost recovery.--A Pennsylvania bomb squad accredited by the Federal Bureau of Investigation and certified in hazardous devices training shall attempt to recover any costs associated with the removal, storage or destruction of consumer fireworks, display fireworks or combustibles under subsection (a) from the owner of the consumer fireworks. Reimbursement

under subsection (c) shall only be available when the costs under this subsection cannot be recovered.

(c) Reimbursement.--If the costs under subsection (b) cannot be recovered, a Pennsylvania bomb squad accredited by the Federal Bureau of Investigation and certified in hazardous devices training may seek reimbursement from the Office of the State Fire Commissioner for the actual costs associated with the removal, storage or destruction of consumer fireworks, display fireworks or combustibles.

Cross References. Section 1115 is referred to in section 1113 of this title; section 7389 of Title 35 (Health and Safety).

PART II
PRODUCTS IN GENERAL
(Reserved)

Enactment. Part II (Reserved) was added December 12, 1994, P.L.903, No.131, effective in 60 days.

PART III
PLANTS AND PLANT PRODUCTS

Chapter
15. Controlled Plants and Noxious Weeds

Enactment. Part III (Reserved) was added December 12, 1994, P.L.903, No.131, effective in 60 days. Chapter 15 was added to Part III on October 30, 2017, P.L.774, No.46, effective in 60 days.

CHAPTER 15
CONTROLLED PLANTS AND NOXIOUS WEEDS

Subchapter
A. Preliminary Provisions
B. Regulation and Administration
C. Enforcement
D. Miscellaneous Provisions

Enactment. Chapter 15 was added October 30, 2017, P.L.774, No.46, effective in 60 days. Section 2 of Act 46 provided that the regulations under 7 Pa. Code §§ 111.22 (relating to prohibited noxious weed seeds) and 111.23 (relating to restricted noxious weed seeds) are abrogated insofar as they are inconsistent with the addition of Chapter 15.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
1501. Scope of chapter.
1502. Definitions.

§ 1501. Scope of chapter.

This chapter relates to controlled plants and noxious weeds.

§ 1502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Class A noxious weed." A weed listed in section 1519(a) (relating to noxious weed list) or a weed that has been determined by the committee to be a Class A noxious weed and that:

(1) Is established in this Commonwealth.

(2) Is geographically limited.

(3) Is intended to be eradicated.

"Class B noxious weed." A weed listed in section 1519(b) or a weed that has been determined by the committee to be a Class B noxious weed and that:

(1) Is widely established in this Commonwealth.

(2) Cannot feasibly be eradicated.

"Class C noxious weed." A weed listed in section 1519(c) or a weed that has been determined by the committee to be a Class C noxious weed and that:

(1) Is not known to exist in this Commonwealth.

(2) Poses a potential threat if introduced in this Commonwealth.

"Committee." The Controlled Plant and Noxious Weed Committee established in section 1511 (relating to designation of noxious weeds and controlled plants).

"Control." The management of the population of a noxious weed or controlled plant to an acceptable level, including eradication, as determined by the department.

"Control order." A written order issued by the department to a person detailing required treatment measures to control noxious weeds or controlled plants.

"Controlled plant." A plant species or subspecies that has been designated by the committee as a controlled plant and is regulated to prevent uncontained growth and to negate undesirable characteristics.

"Distribute" or **"distribution."** To barter, consign, exchange, give away, import, in any way transfer, offer for sale, sell or otherwise supply or transport a noxious weed or controlled plant in this Commonwealth.

"Eradication." The elimination or removal of a noxious weed or controlled plant so that no further growth occurs for at least three consecutive years.

"Established." When used in reference to a plant population, either:

(1) a plant or plant population found growing in this Commonwealth as a wild population and capable of reproduction; or

(2) a plant that has escaped from cultivation and is reproducing.

"Federal noxious weed." A weed listed in 7 CFR 360.200 (relating to designation of noxious weeds).

"General permit." A Statewide or regional permit that is issued by the department for a controlled plant and specifies terms and conditions for distribution, cultivation or propagation of the controlled plant.

"Geographically limited." Found in discrete, limited locations of this Commonwealth.

"Individual permit." A permit that is issued by the department and includes site-specific terms and conditions for:

(1) research, marketing, warehousing, holding, retailing, wholesaling, transporting, distributing, cultivating or propagating of a controlled plant; or

(2) research and educational purposes related to a noxious weed.

"Landowner."

(1) A person:

(i) In whom is vested the title of property.

(ii) With any rights in real property that permit possession or control of surface activities on the real property.

(2) The term includes a department, board, commission, agency and instrumentality of the Federal Government and the Commonwealth and any of its political subdivisions.

"Lessee." A person who has entered into a contract granting the person occupation or use of property during a certain period of time in exchange for a specified rent.

"Noxious weed." Either:

(1) a plant part or plant in any stage of development that is determined to be injurious to crops, livestock, agricultural land or other property, including forest land and bodies of water; or

(2) any weed listed in 7 CFR 360.200.

"Noxious weed control area." A geographic area of this Commonwealth, including the entire State, municipality or any part or tract of land or body of water where a noxious weed is to be controlled as prescribed under this chapter.

"Person." An individual, corporation, association, partnership, municipality or any other entity.

"Plant Pest Management Account" or **"account."** The Plant Pest Management Account established under the act of December 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act.

"Propagate." To increase, multiply or spread a plant or crop through planting, cultivation or any means of reproduction.

"Stop-sale order." A written notice, issued by the department to the person in possession of a noxious weed or controlled plant, which prohibits its distribution.

"Treatment measure." A method of eradicating, managing, regulating or controlling noxious weeds or controlled plants utilizing biological, chemical or mechanical means or a combination thereof.

"Widely established." Established throughout multiple counties or municipalities of this Commonwealth.

Cross References. Section 1502 is referred to in section 11102 of this title.

SUBCHAPTER B
REGULATION AND ADMINISTRATION

Sec.

1511. Designation of noxious weeds and controlled plants.
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§ 1511. Designation of noxious weeds and controlled plants.

(a) Controlled Plant and Noxious Weed Committee.--

(1) The Controlled Plant and Noxious Weed Committee is established in the department and shall have the powers of a departmental administrative board.

(2) The committee shall be composed of:

(i) the secretary, who shall be the chairperson of the committee;

(ii) the Secretary of Conservation and Natural Resources;

(iii) the Secretary of Environmental Protection;

(iv) the Secretary of Transportation;

(v) the Executive Director of the Pennsylvania Fish and Boat Commission and the Executive Director of the Pennsylvania Game Commission;

(vi) the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate and the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives;

(vii) three persons, to be appointed by the secretary, who must represent the interests and concerns of the following groups, organizations or industries:

(A) One member of a Statewide general farm organization.

(B) One member representing the ornamental, turf and horticultural industry.

(C) One member from an institution of higher education within this Commonwealth.

(3) Except for appointed members, who may be represented by designees selected by the secretary, members may be represented by a designee selected by the member.

(4) The appointed members shall serve four-year terms except that the terms shall initially be staggered with one of the three members serving a two-year term.

(5) Successors to fill expired terms of appointed members shall be appointed by the secretary. The secretary may appoint the same member to successive terms.

(6) An appointed member may continue to hold the position after his term has expired and until a successor has been appointed, but in no case may the time period be longer than six months beyond the member's original term of office.

(b) Powers and duties of committee.--

(1) A majority of the committee shall constitute a quorum. A quorum of the committee shall be required to take any action. All actions of the committee shall be by a majority vote.

(2) Prior to taking any action, the committee shall be required to convene a public meeting to elicit comments from the regulated community and other interested parties. The notice and agenda for a meeting of the committee shall contain a list of the plants to be considered for addition to or deletion from the noxious weed list or controlled plant list. The notice and agenda for a meeting shall be published in the Pennsylvania Bulletin at least one week prior to the meeting, except in the case of a special meeting or rescheduled meeting as allowed under 65 Pa.C.S. § 709(a) (relating to public notice). All meetings shall be open to

the public and shall comply with the requirements of 65 Pa.C.S. Ch. 7 (relating to open meetings).

(3) The committee shall have the following powers and duties:

(i) To establish a noxious weed list inclusive of the list set forth under section 1519 (relating to noxious weed list). The committee may add weeds to or remove weeds from the noxious weed list or move noxious weeds to the controlled plant list in accordance with the provisions of this chapter.

(ii) To establish a controlled plant list and to add plants to or remove plants from the controlled plant list in accordance with the provisions of this chapter. A controlled plant, upon approval of the committee, may be moved from the controlled plant list to the noxious weed list.

(iii) To propose the addition or removal of plants to or from the noxious weed list or controlled plant list. The committee may request that the department perform a study and risk assessment related to any plant the committee may consider for addition to or removal from the noxious weed list or controlled plant list.

(iv) To publish the noxious weed list and the controlled plant list and additions or removals or changes thereto as a notice in the Pennsylvania Bulletin. Any additions to or removals from the noxious weed list or the controlled plant list shall become effective 60 days from publication.

(c) Noxious weed and controlled plant seeds.--

(1) Upon the determination of the committee that a plant falls within the classification of a noxious weed or controlled plant, the committee, in consultation with the department, shall determine if the weed's seed falls within the category of a prohibited noxious weed seed or a restricted noxious weed seed and the seeds shall be regulated in the manner established in 7 Pa. Code Ch. 111 (relating to seed testing, labeling and standards).

(2) If no regulatory criteria exist for controlled plant seeds, the department may regulate controlled plant seeds through permit, for a period of two years from the effective date of this section, at which time the department shall promulgate regulatory standards.

Cross References. Section 1511 is referred to in sections 1502, 1519 of this title.

§ 1512. Permits.

(a) General rule.--The following permitting rules apply to noxious weeds for research or educational purposes and to controlled plants for research or marketing purposes, cultivation, propagation, storing, warehousing or display and for retail, wholesale or distribution:

(1) For noxious weeds, the department may issue individual permits. A permit may allow for the cultivation and propagation of a noxious weed for research and educational purposes only. The department shall establish the criteria for a noxious weed individual permit through the issuance of a temporary order, as set forth in section 1514(4) (relating to individual permits).

(2) For controlled plants, the department may issue individual permits or general permits. The department shall establish the criteria for a controlled plant individual

permit through the issuance of a temporary order as specified under section 1514(4).

(b) Permit required.--No person may research, market, distribute, transport, cultivate, hold, retail, wholesale, propagate or display a noxious weed or controlled plant without obtaining a permit from the department in accordance with the provisions of this chapter.

(c) Notice of closing, change of name or moving location.--

(1) Any person who holds a permit under this chapter shall notify the department, in writing, prior to any change of status related to the permit, including:

(i) Intent to close, sell or change the name of the business or entity holding the permit.

(ii) Intent to move the location of the business or entity or the location of the activity specifically authorized by the permit.

(iii) Intent to discontinue the activities specifically authorized by the permit.

(2) Upon notification, the department may enter onto the land and premises, including buildings and conveyances that were utilized for or where the permitted activity of the person holding or required to hold a permit under this chapter took or is taking place, and to conduct inspections of the premises as are necessary to determine what remedial, eradication or containment practices are necessary prior to the closure or other change of status occurring.

(3) Failure to notify the department or otherwise comply with the provisions of this subsection shall be a violation of this chapter.

(d) Revocation or suspension.--Within 30 days of receipt of a notice of revocation, the permit holder may apply for an amendment to the permit or request a hearing as provided under section 1524 (relating to appeal process). The secretary may revoke or suspend all or part of a permit issued under this section when:

(1) The secretary determines that a permit holder has failed to comply with the requirements of this chapter.

(2) It is necessary to protect crops, livestock, agricultural land or other property, including forest land and bodies of water.

§ 1513. General permits.

General permits may be issued for the research, marketing, retail, wholesale, transport, storage, warehousing, display, distribution, cultivation or propagation of controlled plants under the following circumstances:

(1) General permits may be issued on a Statewide or regional basis for controlled plants where the controlled plants have similar characteristics and are capable of being cultivated, propagated, processed and controlled or eradicated in a similar fashion.

(2) General permits shall be published in the Pennsylvania Bulletin effective upon publication.

(3) An applicant seeking a general permit under this section shall inform the department of the applicant's intended use of the general permit and complete an application for approval to operate under the general permit requirements. The application shall include a written plan establishing the practices and methods the applicant will utilize in order to assure compliance with the general permit requirements established by the department. In addition to the written plan, the application shall state, at a minimum, all of the information required under section 1514(5)(i),

(ii), (iii), (iv), (v), (vi), (vii) and (viii) (relating to individual permits).

(4) Before the approval and issuance of a general permit, the department may enter onto and inspect the land and premises, including buildings and conveyances, that will be utilized for the purpose of engaging in an activity authorized by the permit regarding a controlled plant. The inspection shall be conducted during normal business hours.

§ 1514. Individual permits.

Individual permits may be issued for noxious weeds and controlled plants in accordance with the following:

(1) An individual permit may be issued for any controlled plant where:

(i) The controlled plant has individual characteristics as to make it difficult or impossible for the department to regulate through a general set of requirements.

(ii) The land or area on which the controlled plant will be cultivated has characteristics as would make it difficult or impossible for the department to regulate the controlled plant.

(iii) The controlled plant is highly regulated or requires additional scrutiny because of a characteristic of the plant that would be hard to control under a general permit or where Federal law preempts and requires the permitting.

(2) An individual permit shall be issued in writing to the specific permit holder, contain the temporary order establishing the requirements of the individual permit and be published in the Pennsylvania Bulletin and effective as provided under paragraph (4)(iii).

(3) The department may establish, through regulation or a temporary order, standards and requirements addressing the issuance and criteria of an individual permit for noxious weeds and controlled plants.

(4) For each noxious weed, the department shall issue a temporary order establishing the criteria for the individual permit to be issued. For a controlled plant, upon determining that a set of characteristics or circumstances requires the issuance of an individual permit, the department shall issue a temporary order establishing the criteria for the individual permit to be issued. The following shall apply:

(i) Through the temporary order, the department may establish restrictions and standards, including bonding requirements, as the department determines are necessary to:

(A) Identify the specific characteristics of the noxious weed or controlled plant or the circumstances, including Federal laws, regulations or orders, that require the issuance of the individual permit.

(B) Assure the permit holder institutes proper containment, remediation and eradication criteria to protect the interests of the public, the native plant and animal populations in this Commonwealth and this Commonwealth's flora, fauna and natural resources.

(C) Assure the permit holder is responsible for and has the means to cover any costs of remediation, containment or eradication.

(D) Assure that the permit holder does not abandon the permitted site prior to notifying the department and taking the remediation, containment or eradication measures as the department may determine are necessary.

(ii) The department shall publish the temporary order as a notice in the Pennsylvania Bulletin. A copy of the order shall also be delivered to the person seeking the individual permit.

(iii) The provisions of the temporary order shall be applicable as of the date of actual or constructive notice of the temporary order or any later date specified in the temporary order. Publication of the temporary order in the Pennsylvania Bulletin shall be constructive notice.

(iv) The temporary order shall remain in effect for a period not to exceed the length of time for which the individual permit was issued, unless the permit is reissued or extended.

(5) A written application for an individual permit shall meet the criteria established by the department through a temporary order as authorized by this chapter and be made on a form and in a manner prescribed by the department. The application shall contain at least the following:

(i) The legal name, address and daytime and evening telephone numbers of the applicant.

(ii) The physical location, including a detailed plot map and description of the site to be planted or the site where the noxious weed or controlled plant will be propagated, cultivated, stored or distributed. The description of the location shall also include the county, municipality and the name of each road bordering the physical location. The plot map shall be attached to the application and shall state the GPS coordinates outlining the boundaries of the site and other important landmarks.

(iii) For a seller, distributor, holder or depository of propagation material, the name and address and the applicable Federal or Commonwealth license or certification number or both, where applicable.

(iv) The scientific and common names of the noxious weed or controlled plant for which the applicant desires an individual permit according to the United States Department of Agriculture PLANTS Database, including classification of species by sterile biotype, cultivar, variety F1 parent, variety F2 parent or other name.

(v) The identity of the intended plant parts to be used and the stage of development at planting, including seed, rhizome and cutting.

(vi) Attestation that the plant materials have been selected from apparently disease-free and pest-free sources.

(vii) A description of the packaging and biosecurity safeguards to be utilized. Plant material shall be packaged and safeguarded sufficiently to maintain isolation from the domestic environment during transportation.

(viii) An attestation by the applicant stating the applicant shall continue to comply with the permit requirements for the duration of time the plant materials are in the permit holder's possession and that the permit holder understands and agrees to the following:

(A) If the permit holder intends to transfer possession or ownership of the noxious weed or controlled plant, the permit holder shall, before the transfer of possession or ownership, notify the department and assure the person to whom the noxious weed or controlled plant will be transferred or sold that the permit holder has obtained the required individual permit.

(B) If the permit holder intends to stop growing or cultivating the noxious weed or controlled plant, the permit holder shall notify the department and implement all measures ordered by the department to destroy the noxious weed or controlled plant, unless another person assumes responsibility for the noxious weed or controlled plant and is issued an individual permit.

(C) If the permit holder abandons, relinquishes possession or ownership of, control over or responsibility for the noxious weed or controlled plant in a manner inconsistent with the provisions of this chapter, all plant material regulated by the permit shall be destroyed in a manner approved by the department. The original permit holder shall continue to be responsible for the noxious weed or controlled plant, the cost of destruction and eradication of the noxious weed or controlled plant and any plant material associated with the noxious weed or controlled plant. The original permit holder shall continue to be subject to the penalties imposed under this chapter.

(ix) The identification of the use of the noxious weed or controlled plant to be permitted, including ornamental landscape, agricultural crop, feed crop, research, education, biofuel, biomass, further sale or distribution or any other particular use.

(x) A detailed description of the activity authorized by the permit, including the intended size of the area to be planted and the intended date of planting.

(xi) Whether the noxious weed or controlled plant will be further distributed, sold, transported, replanted, used for seed or other purposes. If the noxious weed or controlled plant will be further distributed, sold, transported, replanted, used for seed or other purposes, the permit shall include the name and address of the person and location to which the noxious weed or controlled plant will be distributed, sold or transported. If sold or distributed for further propagation, the application shall include the information required under subparagraphs (i) and (ii) and the name and address of the person to which the noxious weed or controlled plant was sold or distributed for the use.

(xii) A written contingency plan for each site for eradication or recapture in the event of an unauthorized escape or introduction of the noxious weed or controlled plant.

(xiii) An attestation that the applicant shall comply with all terms and conditions contained in the permit.

(6) The secretary may request, in writing, additional information, if necessary, from the applicant after the

application is received to evaluate the potential risk to the Commonwealth. An applicant for an individual permit may be required to post a bond or other security instrument in a form satisfactory to the secretary in an amount the secretary determines.

(7) An individual permit shall expire on December 31 of each year, unless otherwise specified in the permit. An application for renewal of an individual permit must be made by October 1 of the year the permit expires. An application for renewal shall describe any change to the required information previously submitted. Failure to renew an individual permit shall be a violation of this chapter.

(8) General information regarding permit compliance shall be updated on a calendar year basis. Updated information shall be submitted to the department no later than January 10 of each new calendar year. Failure to submit the required information within the time period established under this paragraph shall be a violation of this chapter.

(9) Before the approval and issuance of an individual permit, the department may enter onto and inspect the land and premises, including buildings and conveyances, that will be utilized for the purpose of engaging in an activity authorized by the permit. The inspection shall be limited to normal business hours.

Cross References. Section 1514 is referred to in sections 1512, 1513 of this title.

§ 1515. Prohibited acts.

(a) General compliance.--It shall be a violation of this chapter to fail to comply with any provision of this chapter or any regulation, permit requirement or order established pursuant to this chapter.

(b) Noxious weeds.--Except as established in an individual permit allowing educational or research purposes, it shall be a violation of this chapter to distribute, cultivate or propagate any noxious weed within this Commonwealth.

(c) Controlled plants.--It shall be a violation of this chapter to research, market, hold, warehouse, retail, wholesale, transport, display, distribute, cultivate or propagate a controlled plant without a permit issued by the department.

(d) Abandonment.--It shall be a violation of this chapter for a person holding or required to hold or comply with a permit requirement of this chapter to abandon a noxious weed or controlled plant site or premises without first notifying the department and taking actions as are necessary or ordered by the department to remediate the site.

(e) Concealment or misrepresentation.--It shall be unlawful for a person to:

(1) conceal a noxious weed or controlled plant from inspection; or

(2) make a false declaration of acreage, square footage or any other information required to comply with the permit requirements of this chapter.

§ 1516. Noxious weed control areas.

(a) General rule.--The following apply:

(1) The department may establish a noxious weed control area through a control order issued by the department under section 1517 (relating to control orders). The order shall be published in the Pennsylvania Bulletin and disseminated to persons in the noxious weed control area that will be affected by the order. A control order shall remain in effect until the time as it is rescinded by the department.

(2) Within the noxious weed control area, the department may prohibit, without inspection, the movement, shipment or transportation of any noxious weed or other material capable of carrying the noxious weed from the area under the control order.

(b) Compliance.--The department shall require an affected landowner or lessee or other person within the noxious weed control area to comply with the provisions of the control order within the time frame indicated in the order.

(c) Publication.--Every designated noxious weed control area and any accompanying control order created under this section and section 1517 shall be published in the Pennsylvania Bulletin pursuant to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

§ 1517. Control orders.

(a) Noxious weeds.--

(1) The department may issue a control order requiring a person to implement treatment measures for noxious weeds. The control order shall state the general factual and legal basis for the action and shall advise the affected person that, within 15 days of receipt of the control order, the affected person may file with the department a written request for an administrative hearing. The hearing shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(2) The written control order of the department shall be served upon the affected person by personal service or by registered or certified mail, return receipt requested.

(3) The control order shall become final upon the expiration of the 15-day period for requesting an administrative hearing, unless a timely request for a hearing has been filed with the department.

(b) Controlled plants.--

(1) The department may issue a control order requiring a controlled plant permit holder or a person required to have the permit to implement treatment measures for a controlled plant. The department may issue a control order for controlled plants if the department finds that a controlled plant is growing on any premises or property without a valid permit. The order shall state the general factual and legal basis for the action and advise the affected person that within 15 days of receipt of the order, the affected person may file with the department a written request for an administrative hearing. The hearing shall be conducted in accordance with 2 Pa.C.S.

(2) The written control order of the department shall be served upon the affected person by personal service or by registered or certified mail, return receipt requested.

(3) The control order shall become final upon the expiration of the 15-day period for requesting an administrative hearing, unless a timely request for a hearing has been filed with the department.

(c) Description of situation in order.--The control order shall describe the noxious weed or controlled plant situation that exists and prescribe the required treatment measures and the date by which the measures must be completed.

Cross References. Section 1517 is referred to in sections 1516, 1518 of this title.

§ 1518. Compliance with orders.

(a) General rule.--A person subject to a control order issued under section 1517 (relating to control orders) shall

comply with the control order within the time frame specified in the control order or, if appealed, the time frame established in the final adjudication of the secretary. The cost of the treatment measures shall be borne by the person subject to the control order.

(b) Notice and duty of municipality.--

(1) If the person subject to the control order fails to comply with the control order, the department shall notify that person and the municipality within which the person resides or where the person's property is located by certified mail. After receipt of the notice, the appropriate officials of the municipality shall take the necessary steps to carry out the treatment measures established in the control order within the time frame specified in the notification by the department.

(2) A municipality which acts to control a noxious weed or controlled plant on a noncomplying person's property may recover the expenses and costs incurred by the municipality in carrying out the treatment measures established in the control order from the person who is the subject of the department's control order.

§ 1519. Noxious weed list.

(a) Class A noxious weeds.--Preventing new infestations and eradicating existing infestations of noxious weeds in this class is high priority. The following are Class A noxious weeds:

(1) Amaranthus palmeri S. Watson (commonly known as Palmer amaranth).

(2) Amaranthus rudis (commonly known as common waterhemp).

(3) Amaranthus tuberculatus (commonly known as tall waterhemp).

(4) Avena sterilis L. (commonly known as animated oat).

(5) Cuscuta spp., except for native species (commonly known as dodder).

(6) Galega officinalis L. (commonly known as goatsrue).

(7) Heracleum mantegazzianum Sommier & Levier (commonly known as giant hogweed).

(8) Hydrilla verticillata (L.f.) Royle (commonly known as hydrilla).

(9) Oplismenus hirtellus (L.) P. Beauv. Subsp. undulatifolius (commonly known as Wavyleaf basketgrass).

(10) Orobanche spp., except for native species (commonly known as broomrape).

(11) Pueraria lobata (Willd.) Ohwi (commonly known as kudzu).

(b) Class B noxious weeds.--The department may require control of Class B weeds to contain an injurious infestation, or may provide education or technical consultation. The following are Class B noxious weeds:

(1) Carduus nutans L. (commonly known as musk thistle).

(2) Cirsium arvense L. (commonly known as Canada thistle).

(3) Cirsium vulgare L. (commonly known as bull thistle).

(4) Exotic Lythrum species, including Lythrum salicaria L. (commonly known as purple loosestrife), the Lythrum salicaria complex and Lythrum virgatum L. (commonly known as European wand loosestrife), their cultivars and any combination thereof.

(5) Persicaria perfoliata (L.) H. Grass (formerly known as Polygonum perfoliatum L.) (commonly known as mile-a-minute weed).

(6) Rosa multiflora L. (commonly known as multiflora rose).

(7) Sorghum bicolor L. Moench (commonly known as shattercane).

(8) Sorghum halepense (L.) Pers. (commonly known as Johnsongrass).

(9) Conium maculatum L. (commonly known as poison hemlock).

(c) Class C noxious weeds.--Preventing introduction and eradicating infestations of noxious weeds in this class is the highest priority. Class C noxious weeds are any Federal noxious weeds listed in 7 CFR 360.200 (relating to designation of noxious weeds) not established in this Commonwealth which are not referenced above.

(d) Committee determination.--Any plant or weed designated as a noxious weed under this section and as authorized under section 1511 (relating to designation of noxious weeds and controlled plants).

Cross References. Section 1519 is referred to in sections 1502, 1511 of this title.

§ 1520. Fees.

(a) General rule.--The following fees, which shall be deposited into the account, are established:

(1) General permit, $150 per permit with a $50 annual renewal fee.

(2) Individual permit, $250 per permit with a $100 annual renewal fee.

(3) Inspection fees for field locations - $50 inspection fee for up to 10 acres, with a $5 per acre fee for each additional acre up to a maximum fee of $500.

(4) Inspection fees for greenhouses - Greenhouse locations shall be assessed a fee based on square footage as follows:

(i) $50 for less than 5,000 square feet.

(ii) $100 for 5,000-25,000 square feet.

(iii) $150 if greater than 25,000 square feet.

(5) Plant identification - $40 per sample.

(6) Laboratory testing - Fees as established in Chapter 71 (relating to seed).

(b) Adjustment of fees.--The department may promulgate regulations to fix, adjust, assess and collect or cause to be collected fees as established in this chapter. The fees shall be large enough to meet the reasonable expenses incurred by the department or its agents in administering this chapter, including issuing permits, conducting inspections and carrying out necessary testing. If the secretary determines that money derived from all authorized fees are either greater or less than that required to administer this chapter, the secretary may reduce or increase the fees so as to maintain revenues sufficient to administer this chapter.

(c) Payment of fees.--Fees shall be paid by check, money order or electronic payment made payable to the Commonwealth of Pennsylvania. Failure to pay a fee on time shall be a violation of this chapter. A late fee of $25 shall be assessed for every month that a fee is past due.

§ 1521. Powers and duties of secretary and department.

(a) General rule.--The secretary shall enforce this chapter and may employ all proper means for the enforcement of this chapter, including issuing notices of violation and orders, filing violations for criminal prosecution, seeking injunctive

relief, imposing civil penalties and entering into consent agreements.

(b) General powers and duties of department.--The department, in carrying out the provisions of this chapter and in addition to all other authority granted to the secretary and the department by this chapter, shall have the authority to:

(1) Issue and enforce a written control order to any person in possession of a noxious weed or controlled plant.

(2) Issue and enforce written permits and permit requirements to any person who wishes to research, market, hold, warehouse, retail, wholesale, propagate, transport, cultivate or distribute a noxious weed or controlled plant under the terms and conditions as are reasonably required to carry out the provisions of this chapter.

(3) Utilize any enforcement tool authorized by this chapter to control, remediate, contain or eradicate a noxious weed or controlled plant.

(4) Recover, from the noncomplying person or landowner, expenses and costs incurred in the enforcement and compliance actions. The department may impose additional civil or criminal penalties for failure to comply. The penalties shall include the reasonable cost of eradication and compliance expenses incurred by the department.

(5) If the department is denied access to any building, conveyance, equipment, land or vehicle where the access was sought for the purposes and under the authority set forth in this chapter, the secretary may apply to any issuing authority for a search warrant authorizing access to the building, conveyance, equipment, land or vehicle for that purpose. The court may, upon application by the department, issue the search warrant for the purposes requested.

(c) Right of entry and inspection.--In the performance of the duties required by this chapter, the department and its inspectors, employees and agents shall have access, during reasonable hours, to inspect the land and premises and any areas of the land and premises, including buildings and conveyances, that are or will be utilized for permitted activities.

(d) Search warrants.--

(1) If an inspector, employee or agent of the department has probable cause to believe a noxious weed or controlled plant exists on a property or premises, the department's inspector, employee or agent may, upon oath or affirmation, declare before a court of competent jurisdiction that the inspector, employee or agent has probable cause to believe that noxious weeds or controlled plants exist on the land or premises.

(2) Upon review of the declaration, the court may issue a search warrant for the property or premises. The search warrant shall describe the property or premises, which may be searched under authority of the search warrant, but need not describe the exact or all possible noxious weeds or controlled plants that exist or may exist on the property or premises.

(3) It shall be sufficient probable cause to show either of the following:

(i) That, in cases involving a person who holds an individual permit or general permit under this chapter, the inspector, employee or agent has been refused or delayed entry for the purpose of inspection.

(ii) The inspector, employee or agent has reasonable grounds to believe that a violation of this chapter or

regulations promulgated or orders issued under the authority of this chapter has been or is occurring.

(e) Inspections and sampling authority.--

(1) The department, through its inspectors, employees and agents, may inspect any land, premises, buildings, vehicles, vessels, articles, locations, machinery, conveyances or other places of a person holding a permit under this chapter.

(2) The department may inspect any records required to be kept under an individual permit or general permit and any attendant orders and regulations.

(3) The department may collect samples and take pictures of any noxious weeds or controlled plants.

(f) Delegation.--The secretary may delegate any power or duty under this chapter to an agent acting on behalf of the department, with the exception of the powers and duties of the committee.

§ 1522. Stop-sale orders.

(a) General rule.--The department may issue and enforce a stop-sale order to any person holding or required to hold a permit under this chapter or to any person where a noxious weed or controlled plant exists. The stop-sale order shall require a person to hold, at a designated place, any noxious weed or controlled plant. Noxious weeds or controlled plants subject to a stop-sale order issued under the authority of this subsection shall continue to be held at the designated place until the department is notified by the person to whom the stop-sale order was directed that the prescribed treatment measure or action has been taken and a reinspection of the premises indicates the treatment measure has been completed and was effective.

(b) Official marking of noxious weeds and controlled plants subject to a stop-sale order.--

(1) Noxious weeds and controlled plants under a stop-sale order shall be clearly identified and, where practicable, conspicuously marked.

(2) It shall be unlawful for a person to remove markings placed by the department for this purpose unless instructed by the department to do so.

(c) Violation of a stop-sale order.--It shall be unlawful to violate a stop-sale order issued under this section. The department may impose any and all penalties authorized under this chapter for a violation of the order.

§ 1523. Seizure and condemnation.

(a) General rule.--Where the distribution, transportation, cultivation, propagation, marketing, retail, wholesale, holding, warehousing, research or educational practices of a noxious weed or controlled plant is not in compliance with the provisions of this chapter, a permit, or any regulation promulgated or order issued under this chapter, the department, in addition to any other action authorized under this chapter, may file a complaint before a court of competent jurisdiction in the area in which the noxious weed or controlled plant is located, or before the Commonwealth Court, requesting the injunctive relief as necessary to prevent harm and requesting an order of seizure and condemnation be issued.

(b) Relief.--In the event that the court finds the noxious weed or controlled plant to be in violation of this chapter, a permit, or any regulation promulgated or order issued under this chapter, the court shall order the condemnation of the noxious weed or controlled plant. Upon execution of the court order, the condemned noxious weed or controlled plant shall be

disposed of in any manner consistent with the laws of this Commonwealth.

§ 1524. Appeal process.

An administrative appeal shall be taken and hearing conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action). A person must file an appeal of an enforcement action by the department within 15 days of the date of the enforcement action.

Cross References. Section 1524 is referred to in section 1512 of this title.

§ 1525. Cooperation with other entities.

The department may cooperate and enter into agreements with any individual, person, organization or Federal, State, county or municipal agency for the purpose of implementing the provisions of this chapter. The department may assist in the enforcement of any Federal noxious weed quarantine established under Federal act or regulations.

§ 1526. Rules and regulations.

The department may promulgate rules and regulations and establish and enforce orders necessary for administration and implementation of this chapter in accordance with the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

SUBCHAPTER C
ENFORCEMENT

Sec.

1541. Unlawful conduct.
1542. Interference with inspector, agent or employee of department.
1543. Enforcement and penalties.
1544. Injunctive relief.
1545. De minimis violations.

§ 1541. Unlawful conduct.

It shall be unlawful for a person to fail to comply with or to cause or assist in the violation of a permit, an order or a provision of this chapter or any attendant regulation.

§ 1542. Interference with inspector, agent or employee of department.

A person who willfully or intentionally interferes with an inspector, employee or agent of the department in the performance of the inspector's, employee's or agent's duties or activities authorized under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a term of imprisonment of not more than one year or a fine of not more than $2,500, or both.

§ 1543. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, a person who violates a permit, a provision of this chapter or a rule or regulation adopted pursuant to this chapter or any order issued under this chapter:

(1) For the first offense, commits a summary offense and may, upon conviction, be sentenced for each offense to pay a fine of not less than $100 and costs of prosecution

or to undergo imprisonment for a term which shall be fixed at not more than 90 days, or both.

(2) For a subsequent offense committed within three years of a prior conviction for a violation of this chapter or a rule, regulation or order made pursuant to this chapter, commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 and costs of prosecution or to imprisonment for not more than two years, or both.

(b) Civil penalties.--

(1) In addition to any other remedy available at law or in equity for a violation of this chapter, the department may assess a civil penalty of not more than $10,000, plus cost of remediation, containment or eradication, upon a person for each violation of this chapter, a permit or a regulation promulgated or order issued under the authority of this chapter. The civil penalty assessed shall be payable to the department for deposit into the account. The penalty amount shall be collectible in any manner provided by law for the collection of debt, including referring any collection matter to the Office of Attorney General, which shall recover the amount by action in the appropriate court.

(2) No civil penalty shall be assessed unless the person who assessed the penalty has been given notice and an opportunity for a hearing on the assessment in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 1544. Injunctive relief.

In addition to any other remedies provided for in this chapter, the Attorney General, at the request of the secretary, may initiate, in Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business, an action in equity for an injunction to restrain any and all violations of this chapter, a permit, order or the rules and regulations promulgated under this chapter.

§ 1545. De minimis violations.

Nothing in this chapter shall be construed as requiring the department to report a violation or to institute seizure proceedings or other enforcement actions under this chapter as a result of de minimis violations of this chapter if the department concludes that the public interest will be best served by a suitable notice of violation or warning in writing.

SUBCHAPTER D
MISCELLANEOUS PROVISIONS

Sec.
1561. Disposition of funds.
1562. Preemption.

§ 1561. Disposition of funds.

(a) Plant Pest Management Account.--Money received from permitting fees, control work reimbursement, fines and penalties under this chapter shall be paid into the Plant Pest Management Account.

(b) Supplements.--The account may be supplemented by money received from the following sources:

(1) Federal funds appropriated to the department for purposes of this chapter.

(2) State funds appropriated to the department for purposes of this chapter.

(3) Gifts and other contributions from public or private sources for purposes of this chapter.

§ 1562. Preemption.

All local laws contrary to this chapter are preempted.

PART IV
ANIMALS AND ANIMAL PRODUCTS

Chapter

21. Bees
23. Domestic Animals
25. Animal Exhibition Sanitation
27. Taxidermists

Enactment. Part IV was added December 12, 1994, P.L.903, No.131, effective in 60 days.

CHAPTER 21
BEES

Sec.

2101. Short title of chapter.
2102. Definitions.
2103. Chief apiary inspector.
2104. Quarantines.
2105. Registration of apiaries.
2106. Inspection.
2107. Diseases.
2108. Infected shipments.
2109. Prohibitions.
2110. Free access.
2111. Transportation.
2112. Imported bees.
2113. Penalties.
2114. Civil penalties.
2115. Injunctions.
2116. Concurrent remedies.
2117. Disposition of funds.

Enactment. Chapter 21 was added December 12, 1994, P.L.903, No.131, effective in 60 days.

§ 2101. Short title of chapter.

This chapter shall be known and may be cited as the Bee Law.

§ 2102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Apiary." Any place where one or more colonies or nuclei of bees are kept.

"Apiary yard." A fixed location or locations in this Commonwealth where an apiary is maintained on a continuing basis from which hives may be moved to temporary locations for crop pollination and returned.

"Appliance." Any apparatus, tool, machine or other device used in the handling and manipulating of bees, honey, wax and hives and any container of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

"Bee." Any stage of the common hive or honeybee (Apis mellifera) or other species of the genus Apis.

"Bee disease." Any American or European foul brood, sac brood, bee paralysis or other disease or abnormal condition of eggs, larval, pupal or adult stages of the honeybee.

"Bureau." The Bureau of Plant Industry of the Department of Agriculture.

"Hive." Any frame hive, box hive, box, barrel, log, gum, skep or other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.

"Owner of an apiary." Includes all colonies owned by an individual and located in any permanent location or locations within this Commonwealth.

"Queen apiary." Any apiary or premises in which queen bees are reared or kept for sale or gift.

"Violation." A violation of this chapter or any order or regulation promulgated under this chapter.

§ 2103. Chief apiary inspector.

The secretary shall appoint a chief apiary inspector to be in charge of all apiary inspections and shall appoint such additional apiary inspectors as may be necessary. The inspectors shall be attached to the bureau and shall be furnished with official badges or other insignia of authority. The secretary and the bureau are charged with the enforcement of the provisions of this chapter.

§ 2104. Quarantines.

The department may establish, modify and maintain such quarantines as may be necessary to control the shipment into or within this Commonwealth of any bees, queen bees, hives or appliances capable of transmitting any bee disease for such periods and under such conditions as may be necessary in order to control and eradicate any bee disease or to prevent its introduction, spread or dissemination in this Commonwealth and for such purposes may make and promulgate such rules, regulations and orders relating thereto and to the general enforcement of the provisions of this chapter as may be necessary.

§ 2105. Registration of apiaries.

(a) General rule.--The owner of an apiary located in this Commonwealth shall register the apiary with the department.

(b) Application.--The application for registration of an apiary shall be made on a form provided by the department and shall include all of the following:

(1) The name and complete mailing address of the owner of the apiary and the name and complete mailing address of the person primarily responsible for maintaining and caring for the apiary if different from the owner.

(2) The exact location or locations of each apiary.

(3) The number of colonies contained in the apiary.

(4) Such other information as the department may require.

(c) Fee.--The apiary registration fee shall be $10 for each applicant. No fee shall be charged for temporary relocation of a hive or hives for crop pollination from an apiary yard properly registered as an apiary under this chapter.

(d) Registration term.--A registration under this section shall be valid for a period of not more than two calendar years and shall expire on December 31 of the year following the initial year of registration.

(e) Relocation.--The department may by regulation require apiary owners to report the relocation of an apiary from its

original location as reported at the time of registration to another location in this Commonwealth. The owner of an apiary yard which is properly registered as an apiary under this chapter shall not be required to report the temporary relocation of a hive or hives for crop pollination as long as proper records of hive locations are maintained by the owner at a location available to the department for inspection.

§ 2106. Inspection.

The department through the inspectors shall at least twice during each summer season inspect all queen apiaries. If from the inspection it appears that any bee disease exists in the queen apiary, the apiary inspector making the inspection shall immediately notify in writing the owner or person in charge thereof, and thereafter it shall be unlawful for that person to ship, sell or give away any queen bees from the apiary until the disease has been destroyed and a certificate of that fact has been obtained from the chief inspector. If upon inspection it is found that no bee disease exists in the queen apiary, the chief inspector shall issue a certificate of that fact, and a copy of the certificate shall be attached to each package or shipment of queen bees transported from the apiary. The certificate shall be valid for one year from the date of its issue unless revoked for cause.

Cross References. Section 2106 is referred to in section 2107 of this title.

§ 2107. Diseases.

(a) General rule.--The department through the inspectors shall, as far as practicable, inspect all apiaries in this Commonwealth. If upon inspection it is found that any bee disease exists in the apiary, the inspector making the inspection shall immediately notify in writing the owner or person in charge of the apiary, stating the nature of the disease and whether the disease may or may not be successfully treated. If the disease may be successfully treated, the inspector shall specify and direct the necessary treatment, which shall be administered by the owner or person in charge within 14 days.

(b) Service of notices.--The written notice required by section 2106 (relating to inspection) and this section may be served by handing a copy thereof to the owner or person in charge of the apiary or by leaving a copy thereof with an adult person residing upon the premises or by registered mail addressed to the owner or person in charge of the apiary at his last known or reputed address.

§ 2108. Infected shipments.

Infected shipments, apiaries where the existing disease cannot be successfully treated and apiaries which are affected by disease amenable to treatment but which have not been treated within a period of 14 days after the owner thereof has received notice of the necessary treatment are hereby declared to be a public nuisance and a menace to the community, and the director of the bureau or his authorized agent may destroy by burning or otherwise, without any remuneration to the owner, any infected bees, hives, honey or appliances found therein.

§ 2109. Prohibitions.

(a) Infected colonies, hives or appliances.--No person shall knowingly keep in his possession without proper treatment any colony of bees affected with any bee disease or expose any diseased colony or infected hive or appliance so that flying bees may have access to them.

(b) Infected bees.--No person shall sell, barter or give away, accept, receive or transport any bees affected with any bee disease.

(c) Hives.--No person shall keep or maintain honeybees in any hive other than a modern movable frame hive which permits thorough examination of every comb to determine the presence of bee disease. All other types of hives or receptacles for bees which are in use are hereby declared to be a public nuisance and a menace to the community, and the secretary, the chief apiary inspector or any apiary inspector may seize and destroy the hive or receptacle without remuneration to the owner.

§ 2110. Free access.

The department, the chief apiary inspector and any apiary inspector shall have free access, ingress and egress to and from any apiary, premises, building or other place, public or private, in which bees, queen bees, wax, honey, hives or appliances may be kept or stored. No person shall deny to such duly authorized officer or agent access to any such place or hinder or resist the inspection of the premises.

§ 2111. Transportation.

No person shall transport bees, hives or appliances into this Commonwealth unless they are accompanied with a certificate of inspection signed by the chief apiary inspector or corresponding inspection official of the state or county from which the bees are being transported. The certificate shall certify that actual inspection of the bees was made within 30 days preceding the date of shipment and that the bees, hives and appliances contained in the shipment are free from bee diseases. It is the duty of any officer, agent, servant or employee of any person, firm or corporation engaged in transportation, who shall receive a shipment of bees consigned to a point in this Commonwealth and not having attached thereto a certificate as required, to immediately notify the department and to hold the shipment subject to its orders for a period of 15 days.

§ 2112. Imported bees.

No person shall import any living insects belonging to the genus Apis from any foreign country except Canada for any purpose without written permission from the department.

§ 2113. Penalties.

(a) First violation.--A first violation of this chapter or any order or regulation promulgated under this chapter constitutes a summary offense punishable by a fine of not less than $100.

(b) Second violation.--A second violation of this chapter or any order or regulation promulgated under this chapter constitutes a summary offense punishable by a fine of not less than $300.

(c) Subsequent violations.--A third and subsequent violation of this chapter or any order or regulation promulgated under this chapter constitutes a misdemeanor of the third degree punishable by a fine of not less than $1,000.

§ 2114. Civil penalties.

(a) Assessment.--The department may assess a civil penalty of not more than $1,000 upon a person for each violation.

(b) Contest.--If a civil penalty is assessed against a person under subsection (a), the department shall notify the person by certified mail of the nature of the violation and the amount of the civil penalty and that the person may notify the department in writing within ten calendar days that he wishes to contest the civil penalty. If within ten calendar days from

the receipt of that notification the person does not notify the department of his intent to contest the assessed penalty, the civil penalty shall become final.

(c) Hearing and appeal.--If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies). Appeals may be taken in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 2115. Injunctions.

The Attorney General at the request of the department may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business an action in equity for an injunction to restrain any violation of this chapter or any order or regulation promulgated under this chapter. The Commonwealth shall not be required to furnish a bond or other security in connection with this proceeding.

§ 2116. Concurrent remedies.

The penalties and remedies prescribed by this chapter are concurrent. The existence or exercise of any remedy shall not prevent the exercise of any other remedy under this chapter.

§ 2117. Disposition of funds.

Moneys received from registration fees, fines and civil penalties shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for administering the provisions of this chapter.

CHAPTER 23
DOMESTIC ANIMALS

Subchapter

A. General Provisions
B. Identification of Domestic Animals
C. Detection, Containment or Eradication of Certain Diseases
D. Dealers, Agents and Haulers of Domestic Animals or Dead Domestic Animals
E. Disposal of Dead Domestic Animals and Animal Waste
F. Slaughter and Processing of Domestic Animals
G. Garbage Feeding Business
G.1. Cervidae Livestock Operations
H. Administrative Provisions
I. Swine Hunting Preserves

Enactment. Chapter 23 was added July 11, 1996, P.L.561, No.100, effective in 60 days.

Cross References. Chapter 23 is referred to in sections 2501, 2502 of this title; 4976.1 of Title 75 (Vehicles).

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

2301. Short title of chapter.
2302. Finding, policy and purpose.
2303. Definitions.
2304. Diagnostic services and research.
2305. Keeping and handling of domestic animals.

§ 2301. Short title of chapter.

This chapter shall be known and may be cited as the Domestic Animal Law.

§ 2302. Finding, policy and purpose.

The General Assembly finds that animal health is of major economic interest in this Commonwealth. It is the declared policy of the Commonwealth to assure the health and welfare of animals kept in captivity, to prevent and control diseases and dangerous substances that may threaten the safety of animals and humans and to provide for desirable management practices for the production, keeping and use of domestic animals. It is the purpose of this chapter to give the department authority to implement this policy.

§ 2303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agent." A person, firm, association, partnership or corporation buying or receiving or soliciting or negotiating the sale of domestic animals for or on behalf of any dealer or transporting domestic animals on behalf of any hauler.

"Agricultural biosecurity area." Any of the following areas which has been identified by posted notice as an agricultural biosecurity area and for which the owner or other authorized person has established procedures to inhibit the transference of transmissible disease or hazardous substance:

(1) Agricultural or other open lands as defined under 18 Pa.C.S. § 3503(b.2)(3)(relating to criminal trespass).

(2) A building or animal or plant containment area fenced or enclosed in a manner manifestly designed and constructed to exclude trespassers or to confine domestic animals or plants used in research or agricultural activity or farming as defined in 18 Pa.C.S. § 3309 (relating to agricultural vandalism).

"Animal." A living nonhuman organism having sensation and the power of voluntary movement and requiring for its existence oxygen and organic food.

"Animal waste." Superfluous material emanating from domestic animal production or keeping, including, but not limited to, excrement, offal, eggs, milk, placenta, fetuses, feathers, hair, wool, blood and animal parts which are not intended or suitable for inclusion in the food chain without special processing.

"Appraised value." The current value of a domestic animal at the time of appraisal, determined by current market values, age of animal, physical condition, condition as to disease, nature and extent of disease, breeding value, milk production value, salvage value and any other factors which might affect value.

"Area" or **"locality."** A geographical district or portion or group thereof.

"Article" or **"property."** Any goods, products, containers or materials which are found on the premises where a domestic animal is or has been kept or which are used to hold, contain or transport a domestic animal.

"Brand." A permanent identification mark made on the hide of a live animal by dehydrating the superficial and deep layers of skin by heat, cold, electric current or another method approved by the Department of Agriculture.

"Cervidae livestock operation." (Deleted by amendment).

"Cleanup costs." The costs of indemnification for cleaning, disinfecting or sanitizing domestic animals, domestic animal products, equipment, facilities, buildings and other articles,

including all other costs reasonably related to cleanup, when these costs are incurred either:

(1) as required by a quarantine order issued by the department under authority of this chapter; or

(2) as part of an agreement pursuant to which the department is paying a depopulation incentive under authority of this chapter.

"Compost." The biological digestion of dead domestic animals, animal waste or other biodegradable materials.

"Condemned." The status of a domestic animal, domestic animal product, conveyance or other article that has been determined by the Department of Agriculture as having been exposed to a dangerous transmissible disease or a hazardous substance such that destruction of the domestic animal, domestic animal product, conveyance or other article is necessary to prevent the spread of such disease or contamination, and that is subject to a quarantine order issued under this chapter.

"Conveyance." An automobile, truck, trailer, wagon or other vehicle used in the transportation of live or dead domestic animals, animal waste or domestic animal products or by-products upon the highways of this Commonwealth.

"Dangerous transmissible disease." A transmissible disease of domestic animals that has been designated by this chapter or by order of the Department of Agriculture as presenting a danger to public health, to domestic animal health, to the safety or quality of the food supply or to the economic well-being of the domestic animal industries. This term shall be construed to mean and include the disease agent.

"Dead domestic animal disposal plant." A facility where the body or parts of the body of a dead domestic animal is received and processed for the purpose of salvaging useful material, including, but not limited to, hides, bones, fat and proteins.

"Dealer." A person that buys, receives, sells, exchanges, negotiates or solicits the sale, resale, exchange or transfer of domestic animals or dead domestic animals for the purpose of transfer of ownership or possession to a third party.

"Depopulation incentive." Payment to the owner for a portion of the appraised value of any domestic animal or other property which is voluntarily slaughtered or destroyed with the prior agreement of the Department of Agriculture and in accordance with this chapter, upon the Department of Agriculture's determination that such action serves to protect public health, the safety or quality of the food supply or the economic well-being of the domestic animal industry. A depopulation incentive may be paid only in situations where the domestic animal or other property has not been condemned.

"Disease." Any deviation from or interruption of the normal structure of any part, organ or system of the body of a living domestic animal.

"Disposal costs." The costs of indemnification for disposing of domestic animals, domestic animal products, equipment and other articles, including the cost of transportation for disposal and all other costs reasonably related to disposal, when these costs are incurred either:

(1) as required by a quarantine order issued by the department under authority of this chapter; or

(2) as part of an agreement pursuant to which the department is paying a depopulation incentive under authority of this chapter.

"Domestic animal." An animal maintained in captivity. The term also includes the germ plasm, embryos and fertile ova of such animals.

"Domestic animal feed." Any substance or mixture which is intended for use as food for domestic animals and which is intended for use as a substantial source of nutrients in the diet of domestic animals and is not limited to a substance or mixture intended to be the sole ration of the domestic animal.

"Domestic animal product." A part of a domestic animal or any food, material or article containing any part of a domestic animal.

"Exotic disease." A disease which is not or is no longer native or indigenous to the United States, including those diseases so designated by the United States Department of Agriculture.

"Garbage." All waste or residuals resulting from the handling, preparation, cooking or consumption of food derived in whole or in part from the meat of any animal, including poultry and fish, or other animal material and other refuse of any character that has been associated with the meat of any animal or other animal material. The term does not include waste from ordinary household operations that is fed directly to swine on the same premises where the household is located.

"General quarantine." A quarantine order published in at least one newspaper that restricts the movement of animals and materials, including conveyance into, within or from a designated area or locality.

"Group of domestic animals." Those domestic animals that are maintained on common ground for any purpose or two or more geographically separated concentrations of domestic animals which have an interchange or movement of animals or articles that may carry dangerous transmissible disease or contamination without regard to health status.

"Hauler." A person responsible for the transportation of domestic animals or dead domestic animals into, within or from this Commonwealth, but the term shall not be construed to mean any of the following:

(1) A person who transports a domestic animal which he owns or raises under contract on behalf of a third party between farms which that person owns or operates.

(2) A person who transports a domestic animal from a farm which he owns or operates to a location where ownership or possession is to be transferred to another.

(3) A person who transports a domestic animal which he has purchased or taken possession of at another location from the point of purchase or possession to a farm which that person owns or operates.

(4) A person who transports a domestic animal which he owns or raises under contract on behalf of a third party to and from places of exhibition.

(5) A person who transports a domestic animal which he owns or raises under contract on behalf of a third party to a slaughter or processing facility.

"Hazardous substance." Any element, compound or material which threatens the health of domestic animals or humans.

"Heritable disease." A domestic animal disease resulting from an inherited flaw in tissue, organ or other body structure.

"Humane method of slaughter." Either:

(1) a method of rendering a domestic animal insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective before being handled for slaughter; or

(2) a method of ritual slaughter.

"Incineration." The reduction of domestic animals or articles to ashes by burning at temperatures and for durations sufficient to render the material noninfectious.

"Indemnity." Payment to the owner for a portion of the appraised value of condemned domestic animals, domestic animal products and other condemned articles that are slaughtered or destroyed by order of the Department of Agriculture to eradicate or prevent the spread of dangerous transmissible disease or the spread of contamination by a hazardous substance.

"Interstate" or **"international quarantine."** An order of quarantine issued by the Department of Agriculture which may cover any domestic animal or class of domestic animals, or conveyances, goods, products, materials or articles, regulating or forbidding their entry into this Commonwealth from another state, territory of the United States or foreign country.

"Market value." The current worth of a domestic animal, domestic animal product or other article in markets where such animals, products and other articles are commonly bought and sold.

"Metabolic disease." A domestic animal disease resulting from a physiological dysfunction of an animal tissue or organ.

"Neoplastic disease." A domestic animal disease resulting from an uncontrolled and progressive abnormal growth of tissue.

"Owner." A person owning, possessing or harboring any domestic animal. The term shall also include any person who allows a domestic animal habitually to remain about the premises inhabited, managed or owned by such person.

"Packer." A person engaged in the business of slaughtering, manufacturing or preparing meat, meat products or domestic animal products for sale, whether by such person or others.

"Posted notice." Notice posted in a manner which is reasonably likely to come to the attention of a person.

"Premises." A definite portion of real estate; land with its appurtenances, including any structure erected thereon; and any vehicle or vessel used in transporting passengers, goods, domestic animals or domestic animal products by land, air or by water. As used in this chapter, the term shall be taken in its widest sense.

"Quarantine." Restrictions upon the use, movement or other disposition of domestic animals, domestic animal products, equipment, facilities, vehicles, buildings and other articles required to eradicate, contain or otherwise control a dangerous transmissible disease or to control or prevent contamination by hazardous substances.

"Rendering." The cooking or heating of dead domestic animals or parts of such dead animals until all such cooked or heated material is incapable of transmitting dangerous transmissible disease.

"Ritual slaughter." A humane method of slaughter which is in accordance with the ritual requirements of the Jewish faith or any other religious faith whereby the domestic animal suffers a loss of consciousness by anoxia or hypoxia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

"Salvage." The net proceeds an owner of a domestic animal realizes from the sale of the live domestic animal or the carcass, hide and offal.

"Slaughter." The killing and processing of domestic animals for food production purposes.

"Slaughterer." A person regularly engaged in the commercial slaughter of domestic animals.

"Special quarantine." An order of quarantine issued by the Department of Agriculture covering a single premises or a single domestic animal or any number of domestic animals when confined or contained in or on the same premises and any conveyances, goods, products, materials, containers or articles which may carry disease or contamination by a hazardous substance.

"Stockyard." A place, establishment or facility owned or operated by a domestic animal dealer, consisting of pens or other enclosures and their appurtenances for the handling, keeping or holding of domestic animals for the purpose of sale or shipment.

"Tattoo." A permanent identification mark made on the hide of a live domestic animal by inserting pigment into the deep layers of the skin.

"Transmissible disease." A disease of a domestic animal which can be transferred, reproduced or established in a domestic animal or human by direct or indirect means.

"USDA-APHIS-VS." The United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services.

(Mar. 24, 1998, P.L.217, No.39, eff. imd.; Dec. 9, 2002, P.L.1495, No.190, eff. imd.; June 29, 2006, P.L.206, No.51, eff. 60 days; Nov. 23, 2010, P.L.1360, No.125, eff. imd.)

2010 Amendment. Act 125 added the defs. of "agricultural biosecurity area" and "posted notice."

2006 Amendment. Act 51 deleted the def. of "cervidae livestock operation." See the preamble to Act 51 in the appendix to this title for special provisions relating to legislative intent.

2002 Amendment. Act 190 added the defs. of "cervidae livestock operation," "cleanup costs" and "disposal costs." Section 7 of Act 190 provided that the amendment shall apply to cleanup costs and disposal costs incurred on or after October 1, 2001.

1998 Amendment. Act 39 amended the def. of "garbage."

Cross References. Section 2303 is referred to in sections 2331, 2332, 11102 of this title; sections 3311, 3503 of Title 18 (Crimes and Offenses).

§ 2304. Diagnostic services and research.

The department may establish, maintain or fund, to the extent that funding is available, such domestic animal disease diagnostic services and research activities as are required to prevent, suppress, control and eradicate transmissible diseases of domestic animals, to protect the safety, quality and sufficiency of the human food supply and to provide domestic animal producers information necessary for efficient production and maintenance of healthy domestic animals.

§ 2305. Keeping and handling of domestic animals.

The department shall have authority to regulate the keeping and handling of domestic animals to exclude or contain dangerous transmissible diseases and hazardous substances and to protect the environment, including the authority to require the establishment of an agricultural biosecurity area and that all such agricultural biosecurity areas so established be clearly and conspicuously posted. The department may develop a regulation to govern the form and content of posted notice to identify an agricultural biosecurity area. Nothing in this section shall be construed to authorize the department to require vaccination of any animal to prevent or control rabies whenever that animal is exempt from vaccination under the act

of December 15, 1986 (P.L.1610, No.181), known as the Rabies Prevention and Control in Domestic Animals and Wildlife Act. (Nov. 23, 2010, P.L.1360, No.125, eff. imd.)

SUBCHAPTER B
IDENTIFICATION OF DOMESTIC ANIMALS

Sec.

2311. General authority.
2312. Adoption of form of identification.
2313. Certified copies.
2314. Brand, tattoo or other form of identification as proof of ownership.
2315. Disputes in custody or ownership.
2316. Sale or assignment of form of identification.
2317. Violations and penalty.
2318. Fees and forfeiture.

§ 2311. General authority.

The department shall have authority to impose requirements and methods for the identification of domestic animals owned, kept, possessed or transported within this Commonwealth. The department shall authorize and record the adoption and exclusive use of unique identification marks, numbers or devices, including distinctive branding marks, tattoos, microchips and other forms of identification that are affixed upon domestic animals, and shall maintain a registry of such forms of identification. The department may establish through regulations fees for the assignment, registry and exclusive use of forms of identification registered under this subchapter. Any regulations developed under this section shall not conflict with Federal regulations regarding the identification of domestic animals.

§ 2312. Adoption of form of identification.

(a) General authority.--A domestic animal owner may adopt a brand, tattoo or other form of identification with which to identify domestic animals owned by such person through the procedure set forth in this subchapter. A form of identification recorded in compliance with this subchapter shall be considered the personal property of the person who records it. Such person shall have the exclusive right to use this form of identification within this Commonwealth.

(b) Application, facsimile and fee.--A person desiring to adopt a form of identification shall submit an application form, a facsimile of the form of identification and a recording fee of $25 to the department. The department shall provide the application form upon request. This fee may be changed by the department through regulations.

(c) Provisional filing.--It shall be the duty of the department to file all forms of identification offered for recording, keeping account of the date and chronological order of receipt, pending the review and examination provided for in subsection (d). If the form of identification is subsequently accepted for recording, ownership of the form of identification shall vest from the date of filing.

(d) Review.--The department shall have the power to examine, approve, accept or reject an application to record a brand, tattoo or other form of identification. Following receipt of the required application, facsimile and fee, the department shall, as promptly as possible, determine whether the form of identification is of record as that of some other person and whether the form of identification conflicts with or closely

resembles that of another person. If neither of these conditions exist, the department shall record the form of identification. If either or both of these conditions exist, the department shall not record the form of identification, but shall instead return the recording fee and facsimile to the applicant.

§ 2313. Certified copies.

(a) Issuance.--If a form of identification is recorded, the department shall furnish its owner with two certified copies of the record of the form of identification. Upon receipt of written evidence of the sale, assignment or transfer of a form of identification, the department shall furnish the new owner with two certified copies of the record of the form of identification. Additional copies may be obtained by the payment of $15 for each copy. This fee may be changed by the department through regulations.

(b) Filing.--Within ten days of receiving the two certified copies of the record of the form of identification, the owner of the recorded form of identification shall file one of the certified copies in the office of the county recorder of the county where the owner's principal place of business is located and one copy in each county where domestic animals bearing the recorded form of identification are to be kept. If the form of identification had a prior owner and the prior owner filed a certified copy in any other county, the subsequent owner shall file a certified copy in each county in which the previous owner had filed.

Cross References. Section 2313 is referred to in section 2314 of this title.

§ 2314. Brand, tattoo or other form of identification as proof of ownership.

In all suits at law or in equity or in any criminal proceedings in which the title to domestic animals is an issue, the certified copies recorded pursuant to section 2313 (relating to certified copies) shall be prima facie evidence of the ownership of the domestic animal by the person in whose name the brand, tattoo or other form of identification is recorded.

§ 2315. Disputes in custody or ownership.

Disputes in custody or ownership of domestic animals that bear brands, tattoos or other forms of identification shall be investigated on request by the sheriff of the county where the domestic animals are located. The sheriff may call upon the services of a licensed veterinarian in reading the brands, tattoos or other forms of identification on domestic animals. The cost of the veterinarian's services shall be borne by the person requesting the investigation. The results of the sheriff's investigation shall be a public record and shall be admissible in evidence.

§ 2316. Sale or assignment of form of identification.

Any form of identification recorded pursuant to this subchapter shall be the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise and descent as personal property. Instruments of writing evidencing the sale, assignment or transfer of such form of identification shall be recorded by the department. The fee for recording such sale, assignment or transfer shall be $5. This fee may be changed by the department through regulations.

§ 2317. Violations and penalty.

(a) Unauthorized brands.--It shall be unlawful for a person to use any brand for the branding of domestic animals unless the brand has been recorded pursuant to this subchapter or

unless the use of a brand or the branding procedure is authorized under any other provision of this chapter.

(b) Affixing forms of identification by nonowners.--It shall be unlawful for a person to affix, attempt to affix or cause to be affixed a form of identification upon the domestic animal of another without the owner's consent.

(c) Tampering.--It shall be unlawful for a person to efface, deface or obliterate or attempt to efface, deface or obliterate any brand, tattoo or other form of identification upon any domestic animal belonging to another person. It shall be unlawful for a person to efface, deface, obliterate, conceal, remove or attempt to remove any official domestic animal identification of the department, the United States Department of Agriculture or any other state department of agriculture.

(d) Form of identification of another.--It shall be unlawful for a person to affix, attempt to affix or cause to be affixed upon any domestic animal the form of identification of another.

(e) Other false identification.--It shall be unlawful for any person to place, attach or use on a domestic animal, or to cause to be placed, attached or used on a domestic animal, or to attempt to place, attach or use on a domestic animal, any form of identification such as a brand, tattoo, tag, emblem, marking, microchip or other identifying mark, number or device that such person knows misrepresents the identity or health of the domestic animal, with intent to interfere or deceive in the identification, testing, vaccinating, selling, transfer or slaughter of the domestic animal.

(f) Penalty.--Any person who is convicted of violating any provision of this subchapter shall be guilty of a misdemeanor of the second degree and may be imprisoned for not more than two years and be fined not more than $5,000.

§ 2318. Fees and forfeiture.

An owner of a form of identification of record shall pay the department a fee of $5 on January 1 of every fifth year from the year in which the form of identification was recorded with the department as that owner's property. This fee may be changed by the department through regulations. The department shall give a receipt for all such payments made. If an owner of a form of identification of record should fail, refuse or neglect to pay such fee by July 1 of any year in which it is due, such form of identification shall become forfeited and no longer carried in the record. Any such forfeited form of identification shall not be issued to any other person within a period of less than ten years following date of forfeiture.

SUBCHAPTER C
DETECTION, CONTAINMENT OR ERADICATION OF CERTAIN DISEASES

Sec.

2321. Dangerous transmissible diseases.
2322. Neoplastic diseases, metabolic diseases and heritable diseases.
2323. Health requirements.
2324. Safety of domestic animal feed.
2325. Use of biologicals, antibiotics, genetic material, chemicals, diagnostic agents and other substances.
2326. Sanitation.
2327. Disease surveillance and detection.
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2330. Condemnation.
2331. Indemnification.
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2333. Restriction on payment of indemnification and depopulation incentive.
2334. Report on insurance or cost-sharing program.
2335. Contract growers.

§ 2321. Dangerous transmissible diseases.

(a) Specific dangerous transmissible diseases.--The following transmissible diseases are dangerous transmissible diseases within the meaning of this chapter:

(1) Actinomycosis, an infectious disease of cattle and man caused by Actinomyces bovis.

(2) African horse sickness, an infectious disease of horses caused by a reovirus (AHSV).

(3) African swine fever, an infectious disease of swine caused by a virus (ASFV).

(4) Anaplasmosis, an infectious disease of cattle, deer and camelids caused by Anaplasma marginale.

(5) Anthrax, an infectious disease of animals and man caused by Bacillis anthracis.

(6) Avian influenza, an infectious disease of poultry caused by Type A. influenza virus.

(7) Babesiosis (piroplasmosis), an infectious disease of cattle, equidae, deer and bison caused by Babesia bigemina, Babesia bovis, Babesia equi or Babesia coballi.

(8) Blackleg, an infectious disease of ruminants caused by Clostridium chauvoei.

(9) Bluetongue, an infectious disease of cattle, sheep, goats and cervidae caused by an orbivirus (BTV).

(10) Bovine spongiform encephalopathy (BSE), an infectious disease of cattle caused by a protein-like agent.

(11) Bovine Virus Diarrhea - type 2, an infectious disease of cattle caused by a virus (BVD).

(12) Brucellosis, an infectious disease of animals and man caused by Brucella abortus, Brucella suis, Brucella melitensis or Brucella ovis.

(13) Chlamydiosis (psittacosis), an infectious disease of birds and man caused by Chlamydia psittaci.

(14) Chronic respiratory disease of poultry (CRD), an infectious disease of poultry caused by Mycoplasma synoviae or Mycoplasma gallisepticum.

(15) Contagious equine metritis (CEM), an infectious disease of equine caused by Hemophilus equigenitalis.

(16) Contagious pleuropneumonia (CBPP), an infectious disease of cattle caused by Mycoplasma mycoides.

(17) Dourine, an infectious disease of equines caused by Trypanosoma equiperdum.

(18) Duck viral enteritis (DVE, duck plague), an infectious disease of ducks caused by a herpes virus (DVEV).

(19) Epizootic hemorrhagic disease (EHD), an infectious disease of cattle and deer caused by a virus (EHDV).

(20) Equine encephalitis, an infectious disease of equines and man caused by an alphavirus: Venezuelan (VEE), Western (WEE) or Eastern (EEE).

(21) Equine infectious anemia (EIA, swamp fever), an infectious disease of equines caused by a virus (EIAV).

(22) Foot and mouth disease (FMD), an infectious disease of cattle, sheep, goats, swine and deer caused by an aphthovirus (FMDV).

(23) Glanders, an infectious disease of horses caused by Pseudomonas mallei.

(24) Heartwater disease, an infectious disease of cattle caused by a rickettsia, Cowdria ruminatum.

(25) Hog cholera, an infectious disease of swine caused by a pestivirus (HCV).

(26) Listeriosis, an infectious disease of cattle, sheep and man caused by Listeria monocytogenes.

(27) Malignant catarrhal fever (MCF), an infectious disease of cattle caused by a virus (MCFV).

(28) Newcastle disease, an infectious disease of poultry caused by a virus.

(29) Paratuberculosis (Johnes disease), an infectious disease of cattle, sheep, goats and deer caused by Mycobacterium paratuberculosis.

(30) Pseudorabies, an infectious disease of swine, cattle, sheep, goats, dogs and cats caused by Herpesvirus suis.

(31) Psoroptic mange, an infectious disease of cattle and sheep caused by psoroptes mites.

(32) Rabies, an infectious disease of cattle, dogs, cats, sheep, horses and man caused by a virus.

(33) Rift Valley fever, an infectious disease of sheep caused by a virus (RVFV).

(34) Rinderpest, an infectious disease of ruminants and swine caused by a mobillivirus (RDV).

(35) Salmonellosis, an infection of animals and man caused by various Salmonella species: S. pullorum (poultry), S. typhimurium (cattle, equine and man), S. dublin (cattle and man), S. gallinarum (poultry) and S. cholerasuis (swine).

(36) Scrapie, an infectious disease of sheep and goats caused by a virus-like agent.

(37) Screwworm (miasis), a wound infection of animals and man caused by Cochliomyia hominivorax.

(38) Tuberculosis, an infectious disease of cattle, bison, sheep, goats, swine, horses, cervidae, camelids and man caused by Mycobacterium bovis, M. avium or M. tuberculosis.

(39) Vesicular exanthema, an infectious disease of swine, certain aquatic animals and man caused by a calicivirus (VEV).

(40) Vesicular stomatitis, an infectious disease of cattle, sheep and swine caused by a virus.

(b) Designation of additional dangerous transmissible diseases through regulation.--The department shall have the authority to promulgate regulations that designate other transmissible diseases to be dangerous transmissible diseases under this chapter if such other transmissible diseases present a danger to public health, to domestic animal health, to the safety or quality of the food supply or to the economic well-being of the domestic animal industries. The department shall also have the authority to withdraw the designation of a particular transmissible disease as a dangerous transmissible disease under this chapter if the transmissible disease no longer presents a danger to public health, to domestic animal health, to the safety or quality of the food supply or to the economic well-being of the domestic animal industries.

(c) Department of Health; notification and consultation.--The department shall inform the Department of Health of the outbreak of a domestic animal disease which may threaten human health and shall, in consultation with the Department of Health, determine the public health risk associated with the domestic animal disease outbreak and the appropriate action to manage such risk. Additions or deletions

of domestic animal diseases of public health significance to or from the list of dangerous transmissible diseases shall be jointly determined by the department and the Department of Health.

(d) Designation of additional dangerous transmissible diseases through temporary order.--Upon the determination that a transmissible disease not listed in subsection (a) and not designated a dangerous transmissible disease through regulation under subsection (b) presents a danger to public health, to domestic animal health, to the safety or quality of the food supply or to the economic well-being of the domestic animal industries, the department shall issue a temporary order proclaiming that transmissible disease to be a dangerous transmissible disease within the meaning of this chapter. This chapter shall be applicable to that dangerous transmissible disease as of the date of actual or constructive notice of the order or any later date specified in that order. The department shall publish such an order in the Pennsylvania Bulletin within 20 days of its issuance. Publication in the Pennsylvania Bulletin shall effect constructive notice. The temporary order shall remain in effect for a period not to exceed one year, unless reissued, or until the transmissible disease is designated to be a dangerous transmissible disease through regulation under subsection (b), whichever occurs first.

(e) Regulations.--The department may establish regulations addressing the specific discovery, prevention, reporting, testing, control and eradication measures which it determines are necessary with respect to any dangerous transmissible disease.

§ 2322. Neoplastic diseases, metabolic diseases and heritable diseases.

If a neoplastic disease, metabolic disease or heritable disease is determined by the department to pose a threat to domestic animal health or to the economic well-being of the domestic animal industries, then the department may establish regulations addressing any discovery, prevention, reporting, testing, control, eradication or other measures as are necessary to lessen or eliminate the threat.

§ 2323. Health requirements.

(a) Interstate and intrastate movement of domestic animals.--The department may establish identification and minimum health standards for the importation or the intrastate movement of domestic animals in this Commonwealth and may establish procedures for certification of the health status of domestic animals imported into or transported within this Commonwealth. If the department shall suspect the genuineness of any health certificate or official disease test report relating to domestic animals or shall question the competency of the person who shall have issued such report or certificate, the department may decline to accept the same and may refuse to permit the importation or intrastate movement of the domestic animals concerned unless a certificate or report is furnished from the proper inspector of the state or country of origin or USDA-APHIS-VS or unless the department shall otherwise determine.

(b) Violations.--

(1) It shall be unlawful for any person to knowingly, recklessly or negligently import or bring into this Commonwealth without the written permission of the department any domestic animal that is contaminated with a hazardous substance or that is infected with or that has been exposed to any transmissible disease.

(2) It shall be unlawful for any person to knowingly, recklessly or negligently import or bring into this Commonwealth any domestic animal in violation of any of the provisions of this chapter, an order entered under authority of this chapter or any attendant regulation to prevent the introduction of any transmissible disease.

(3) It shall be unlawful for any person to knowingly, recklessly or negligently receive or keep or have in his keeping or possession any domestic animal imported, brought into or transported within this Commonwealth in violation of any of the provisions of this chapter or to allow any such domestic animal to come into contact with any other domestic animal.

(c) Authority to remove or slaughter.--Whenever any domestic animal is imported into this Commonwealth or transported within this Commonwealth in violation of this chapter, the department shall have authority to cause such domestic animal to be removed from this Commonwealth or the domestic animal removed directly to slaughter or destroyed without indemnity.

§ 2324. Safety of domestic animal feed.

(a) General authority.--The department shall have the authority and the duty to protect the food supply of domestic animals in order to prevent the transmission of diseases and substances hazardous to human health or domestic animal health.

(b) Carcasses used for animal feed.--No domestic animal carcass or parts of a domestic animal carcass shall be sold for domestic animal feeding purposes if the meat or meat parts may be hazardous to the health of domestic animals to which such meat or meat parts may be fed.

(c) Garbage used for domestic animal feed.--No garbage may be fed to domestic animals except in accordance with Subchapter G (relating to garbage feeding business).

(d) Regulations.--The department shall establish regulations and standards to assure the safety of materials that are fed to domestic animals.

(e) Licensure.--The department shall provide for the licensure of persons owning or operating facilities, equipment or conveyances utilized in the collection, treatment, preparation and transportation of domestic animal by-products that are used in feed for domestic animals.

(f) Content.--The department may establish standards for the composition of feed for domestic animals, including, but not limited to, antibiotics and chemical additives for the purpose of preventing tissue residues and contamination of domestic animal products by substances hazardous to human health or domestic animal health. Such standards shall be established by regulation.

(g) Prohibition.--Notwithstanding any provision of this chapter to the contrary, a domestic animal or part of a domestic animal which is suspected of carrying a transmissible spongiform encephalopathy shall not be moved without written permission of the department or used in the manufacture or production of domestic animal feed.

§ 2325. Use of biologicals, antibiotics, genetic material, chemicals, diagnostic agents and other substances.

(a) Authority.--The department shall have the authority to regulate the manufacture, sale or administration of any biological product intended for diagnostic, preventive or therapeutic purposes with domestic animals. The department may establish regulations to control the production, sale, distribution or use of biologicals, antibiotics, genetic

material, chemicals and other substances administered to domestic animals.

(b) Testing.--The department may prescribe methods of making official tests and may restrict the use of such tests to authorized accredited veterinarians and agents of the department and USDA-APHIS-VS for diagnosis of diseases of domestic animals. It shall be the duty of each person using restricted tests to report in writing the results of restricted tests to the department. Each report shall be signed by the person who conducted the test and shall give the date of the test, the name and address of the owner of the domestic animal tested, the location where such test was conducted, a description and definitive permanent identification of the domestic animal or domestic animals tested and a complete statement of the actual result of such test. It shall be unlawful for any person whose duty it is to make a report to fail or refuse to do so.

(c) Vaccines.--The department may, in order to prevent or control the introduction or spread of dangerous transmissible diseases, restrict the use of vaccines in domestic animals or cause domestic animals in this Commonwealth to be vaccinated with biologicals according to regulations promulgated under this chapter.

§ 2326. Sanitation.

The department shall have the authority to establish standards of sanitation for the operation and maintenance of any facility, conveyance, equipment, building or other means of housing, containing or transporting domestic animals. Sanitation standards shall be established to minimize the possible transmission of dangerous transmissible diseases.

§ 2327. Disease surveillance and detection.

(a) General authority.--The department shall have the authority to regularly monitor the domestic animal population of this Commonwealth to determine the prevalence, incidence and location of transmissible diseases or contamination by hazardous substances.

(b) Duty to report.--It shall be the duty of every practitioner of veterinary medicine and every diagnostic laboratory in this Commonwealth, immediately upon receiving information thereof, to report to the department each case of any dangerous transmissible disease and each case of potential contamination by substances declared hazardous by the department.

(c) Violations.--

(1) It shall be unlawful for any person to impede, hinder or interfere with the testing of a domestic animal or to refuse to confine a domestic animal so as to allow testing without undue burden on the official conducting the test or to fail to present the person's domestic animals for testing by the department under authority of this chapter after reasonable notice of the proposed testing has been given.

(2) It shall be unlawful for any person who has knowledge that a domestic animal is infected with a dangerous transmissible disease or has been exposed to a dangerous transmissible disease or has been contaminated by a hazardous substance to conceal or attempt to conceal such domestic animal or knowledge of such a domestic animal from the department.

(d) Wild animals.--The department shall have the authority to solicit assistance from and provide assistance to Federal and other State agencies, local governments and private entities in monitoring wild animals in this Commonwealth to determine

the presence of dangerous transmissible disease. This monitoring may be done in cooperation with the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the United States Fish and Wildlife Service or any other private or governmental entity.

§ 2328. Entry on premises.

In the performance of the duties required by this chapter, the department may at any time enter any premises or stop and detain any vehicle or conveyance. If entry shall be refused or delayed by any person, the department's employee or agent may, upon oath or affirmation, declare before a court of competent jurisdiction that the employee or agent has reason to believe that domestic animals or articles that are or have been confined or kept in or on such premises carry a dangerous transmissible disease, have been exposed to a dangerous transmissible disease or have been contaminated by a hazardous substance and shall further declare that permission to enter and to investigate has been refused or delayed to the department. Upon review of such declaration, the court of jurisdiction may issue a search warrant for such premises, directed to the proper officer, agent or employee. The search warrant shall describe the premises which may be searched under authority of the search warrant, but need not describe the domestic animal, domestic animal products or other articles which are alleged to carry a dangerous transmissible disease, to have been exposed to a dangerous transmissible disease or to have been contaminated by a hazardous substance, which are or have been confined or kept on such premises. An officer, agent or employee of the department armed with such a search warrant shall have all the authority of a constable or other peace officer in the execution of the warrant. It shall be unlawful for any person to refuse or delay admission to any premises to any officer, agent or employee of the department provided with a search warrant issued pursuant to this section. The department shall take appropriate biosecurity and safety measures to ensure that it does not allow dangerous transmissible disease or contamination from hazardous substances to spread as the result of its entry upon any premises or conveyance.

§ 2329. Quarantine.

(a) Power to establish and enforce.--Whenever a dangerous transmissible disease or contamination by hazardous substances exists anywhere within or outside of this Commonwealth, or whenever it is deemed advisable to test or treat any domestic animal upon the reasonable suspicion that it has contracted or been exposed to a dangerous transmissible disease or is contaminated with a hazardous substance, or whenever the testing or treatment of a domestic animal indicates that the domestic animal has been exposed to a dangerous transmissible disease or contaminated with a hazardous substance so as to render future accurate testing for recent exposure of that domestic animal to that dangerous transmissible disease or hazardous substance impractical or impossible, the department shall have the power to establish and enforce quarantines of any such infected, exposed, contaminated, suspected or susceptible domestic animal. In addition to the aforedescribed domestic animals, a quarantine may apply to any goods, products, facilities, containers, vehicles or materials that may carry dangerous transmissible disease or that may be contaminated with a hazardous substance and may be applied on or in or against any premises, area or locality as defined in this chapter.

(b) Type and duration.--Quarantines shall be of three kinds:

(1) interstate and/or international;
(2) general; and
(3) special;

and shall continue in effect for such lengths of time as the department deems necessary or advisable.

(c) Interstate and international quarantines.--

(1) An interstate or international quarantine may be established and enforced by order of the department against any place or places outside this Commonwealth for any of the reasons set forth in subsection (a) or where dangerous transmissible diseases or hazardous substances are reported to exist. An interstate or international quarantine order may prohibit the bringing of any domestic animals, conveyances, containers, goods, products or materials into this Commonwealth except in accordance with the requirements set forth in the quarantine order. The order may require the quarantine, testing, treatment, killing or other disposition of any domestic animal brought into this Commonwealth in violation of the order and may require the quarantine, disinfection or destruction of goods, products, conveyances, materials or containers brought into this Commonwealth in violation of the order. The order may also require that a person importing domestic animals in violation of the order bear the expenses of postentry requirements of this chapter.

(2) An interstate or international quarantine shall be established by order of the department and shall be effective as of the date of actual or constructive notice of the order or any later date specified in that order.

(3) Notices and copies of the order establishing an interstate or international quarantine shall be advertised in the Pennsylvania Bulletin within 20 days of the date of the order, in at least one newspaper of general circulation within this Commonwealth and in at least one newspaper of general circulation in the state(s) or nation(s) against which the quarantine is directed. Publication in the Pennsylvania Bulletin shall effect constructive notice. The department shall, if practicable, mail or deliver notice and a copy of the quarantine order to the governmental agency or agencies overseeing agricultural affairs in the state(s) or nation(s) against which the quarantine is directed. The quarantine order may be enforced prior to such publication or distribution.

(d) General quarantines.--

(1) A general quarantine may be established and enforced by order of the department against any area or locality within this Commonwealth for any of the reasons set forth in subsection (a) to prevent a dangerous transmissible disease or a domestic animal contaminated by a hazardous substance from being carried into, within, from or out of the area or locality that is subject to the quarantine. A general quarantine order may include any domestic animals, conveyances, containers, goods, products or materials that may carry dangerous transmissible disease or domestic animals that are contaminated with a hazardous substance and may include any area or locality, including all buildings, structures, premises and equipment located therein.

(2) A general quarantine shall be established by order of the department and shall be effective as of the date of actual or constructive notice of the order or any later date specified in that order.

(3) Notices and copies of the order establishing a general quarantine shall be advertised in the Pennsylvania

Bulletin within 20 days of the date of the order and in at least one newspaper of general circulation within the area or locality subject to the quarantine. Publication in the Pennsylvania Bulletin shall effect constructive notice. The quarantine order may be enforced prior to such publication.

(e) Special quarantines.--

(1) A special quarantine may be established and enforced by order of the department against any premises, domestic animals, conveyances, containers, goods, products or materials situated within this Commonwealth for any of the reasons set forth in subsection (a) or whenever it is deemed necessary or advisable by the department to prevent or control the spread of a dangerous transmissible disease; control a domestic animal contaminated by a hazardous substance; control any domestic animal; examine or disinfect or regulate the use of any premises, materials, conveyances, goods, containers or products; or destroy or dispose of the carcass of any dead domestic animal.

(2) A special quarantine shall be established by the posting of a quarantine order describing the domestic animal or domestic animals and any conveyances, containers, goods, materials, products or premises covered by the special quarantine. The quarantine notice shall be conspicuously posted so as to alert any visitor to the quarantined premises of the probable presence of a dangerous transmissible disease or domestic animals contaminated by hazardous substances.

(3) If practicable, the department shall serve a copy of the special quarantine order upon the owner or caretaker of the domestic animals, premises or other property subject to the order. The department shall have authority to make available to interested persons the names and locations of premises subject to special quarantine.

(f) Violations of quarantine.--

(1) It shall be unlawful for any person to sell, offer for sale, lease, lend, exchange, give away, transfer, remove or allow to be removed any animals or animal products, goods, materials, containers, conveyances or other articles that are the subject of a general or special quarantine order under this section without first obtaining the written permission of the department to do so.

(2) It shall be unlawful for any person to allow a domestic animal that is the subject of a general or special quarantine order under this section to stray beyond the quarantined premises, area or locality.

(3) It shall be unlawful for any person to transfer ownership of any animal or animal product that is the subject of a general or special quarantine order under this section without first notifying the prospective or actual transferee of the quarantine order and the reasons for the imposition of quarantine.

(4) It shall be unlawful for any person to use or prepare as food for humans or domestic animals any domestic animal or domestic animal product that is the subject of a general or special quarantine order under this section without first obtaining the written permission of the department to do so. Such permission shall be granted in accordance with any applicable guidelines established by the department.

(5) It shall be unlawful for any person to tear, deface, destroy, remove, conceal or alter in any way any notice of quarantine posted by the department or to remove or destroy, partially or wholly, any portion of a building, tree, fence

or other object to which a notice of quarantine has been posted by the department.

(6) It shall be unlawful for any person to bring into this Commonwealth any domestic animals, containers, goods, products, conveyances or materials that are the subject of an interstate or international quarantine order under this section.

(7) It shall be unlawful for any person to impede, hinder or interfere with the department entering upon premises or elsewhere in the performance of duties imposed by this subchapter.

(8) It shall be unlawful for any person to violate any provision of a quarantine order issued under this section.

§ 2330. Condemnation.

The department shall have the authority to condemn and seize or cause to be destroyed any quarantined domestic animal, domestic animal product, conveyance or other quarantined article that has been determined by the department as having been exposed to a dangerous transmissible disease or a hazardous substance such that destruction of the domestic animal, domestic animal product, conveyance or other article is necessary to prevent the spread of such disease or contamination.

§ 2331. Indemnification.

(a) In general.--Whenever a condemned domestic animal, domestic animal product or other condemned property is slaughtered or destroyed by order of the department to eradicate or prevent the spread of dangerous transmissible disease or contamination by a hazardous substance, the department may compensate the owner of such domestic animal, domestic animal product or other condemned property for a portion of the appraised value of the domestic animal or property and may compensate a person for cleanup costs and disposal costs or a portion thereof, provided that such compensation is made in accordance with this section. Notwithstanding the definition of "owner" set forth in section 2303 (relating to definitions), indemnification payments and payments of cleanup costs and disposal costs made under this section shall be made only to those persons who have an actual ownership interest in the domestic animal or other property that is the subject of the indemnification payment.

(b) Indemnification limits.--

(1) The amount of indemnity paid by the department shall not exceed $2,000 with respect to any individual domestic animal.

(2) The amount of indemnity paid by the department with respect to domestic animals condemned under authority of this chapter shall not exceed the sum of $200,000 for any group of domestic animals, regardless of the number of owners having domestic animals within such group of condemned domestic animals.

(3) The maximum amount of indemnity paid by the department shall not exceed 67% of the appraised value of the condemned domestic animal, domestic animal product or other condemned property for which indemnification is sought.

(4) The amount of indemnity paid by the department to the owner of domestic animals condemned under authority of this chapter plus the salvage value and the value of indemnity payments received from any other source shall not exceed 90% of the appraised value of such domestic animals.

(5) The amount of indemnity which the department may pay under this section shall be limited by the availability of funds for this purpose.

(6) Funds for indemnification under this section may not be paid by the department to indemnify owners of condemned cats and dogs.

(b.1) Cleanup costs and disposal costs.--

(1) The department may pay cleanup costs and disposal costs incurred on or after October 1, 2001, but prior to the effective date of this subsection if the cleanup and disposal activities generating the costs are agreed upon in writing between the department and the person incurring the costs.

(2) The department may pay cleanup costs and disposal costs incurred on or after the effective date of this subsection if the cleanup and disposal activities generating the costs are agreed upon in writing between the department and the person incurring the costs in advance of the performance of the activities.

(3) The amount of cleanup costs and disposal costs which the department may pay under this section shall be limited by the availability of funds for this purpose.

(c) Forfeiture.--A person shall not be eligible for any indemnity payment, depopulation incentive payment, cleanup cost payment or disposal cost payment under this chapter for any domestic animal, group of domestic animals, domestic animal product or other article if such person has been determined by the department to have committed a violation of any provision of this chapter or order, rule or regulation adopted under authority of this chapter that has resulted in the condemnation for which indemnity would be paid. A person shall not be eligible for any indemnity payment, depopulation incentive payment, cleanup cost payment or disposal cost payment with respect to any domestic animal or group of domestic animals having a condition of disease or contamination which the department has determined to have been directly caused by the person's willful misuse of a pesticide or a hazardous substance.

(d) Appraisal.--Whenever the department condemns domestic animals, domestic animal products or other articles, the value of such animals, products and articles shall be appraised. No domestic animal that is dead shall be appraised, and no indemnity shall be payable for such domestic animal, except that a domestic animal that dies after condemnation by the department may be appraised on the basis of its condition at the time of condemnation and indemnity may be paid with respect to such a domestic animal. The department shall determine the appraised value of the condemned domestic animal, products or articles taking into consideration the current market values, age of the animal, physical condition of the animal, its condition as to disease, nature and extent of disease, breeding value, milk production value, salvage value of the animal and any other factors which may influence value. If the department and the owner of the condemned domestic animals, domestic animal products or other articles are unable to agree on the appraised value of the domestic animals, products or articles, then the department and the owner may appoint a mutually agreeable appraiser to determine the appraised value. Costs of such an appraisal shall be borne by the owner. In the absence of such a mutually agreeable appraiser, the department's determination of the appraised value shall control.

(e) Disposal of condemned domestic animal.--A domestic animal that has been condemned by the department and is eligible for indemnity under this chapter shall be disposed of by the owner, under the supervision of the department, in accordance with the laws of this Commonwealth and regulations adopted by the department. When condemned domestic animals are approved

by the department for salvage, the salvage value shall be paid directly to the owner by the buyer of the live domestic animal or the buyer of the carcass, hide, offal or other by-product. The buyer shall promptly present an itemized statement of the salvage value to the department to determine the amount, if any, due from the department to the owner.
(Dec. 9, 2002, P.L.1495, No.190, eff. imd.)

2002 Amendment. Act 190 amended subsecs. (a) and (c) and added subsec. (b.1). Section 7 of Act 190 provided that the amendment shall apply to cleanup costs and disposal costs incurred on or after October 1, 2001.

Cross References. Section 2331 is referred to in sections 2333, 2334 of this title.

§ 2332. Depopulation incentive.

(a) Generally.--If a domestic animal, domestic animal product or other property has not been condemned under authority of this chapter, the department shall have the discretion to pay to the owner of any domestic animal or other property a sum which shall not exceed 33% of the appraised value of that domestic animal or other property and may compensate a person for cleanup costs and disposal costs or a portion thereof in consideration of that owner or other authorized person voluntarily slaughtering or destroying that domestic animal or other property and implementing cleanup and disposal measures in accordance with this chapter and with the prior agreement of the department. This discretion may be exercised only upon the department's determination that the destruction and disposal of the domestic animal or other property serves to protect public health, the safety or quality of the food supply or the economic well-being of domestic animal industries. Payment of a depopulation incentive under this section is limited by the availability of funds for this purpose.

(b) Limits.--A depopulation incentive payment shall not exceed $2,000 with respect to any individual domestic animal. A depopulation incentive payment plus the salvage value and any other compensation received from other sources shall not exceed 90% of the appraised value of the domestic animal or other property that is the subject of the depopulation incentive payment. Notwithstanding the definition of "owner" in section 2303 (relating to definitions), depopulation incentive payments made under this section shall be made only to those persons who have an actual ownership interest in the domestic animal or other property that is the subject of the depopulation incentive payment.

(c) Cats and dogs.--The department may not make depopulation incentive payments for cats and dogs.
(Dec. 9, 2002, P.L.1495, No.190, eff. imd.)

2002 Amendment. Act 190 amended subsec. (a). Section 7 of Act 190 provided that the amendment shall apply to cleanup costs and disposal costs incurred on or after October 1, 2001.

Cross References. Section 2332 is referred to in section 2333 of this title.

§ 2333. Restriction on payment of indemnification and depopulation incentive.

(a) Generally.--Notwithstanding any other provision of law, indemnification under section 2331 (relating to indemnification) and depopulation incentive under section 2332 (relating to depopulation incentive) shall be paid only for domestic animals.

(b) Avian influenza.--Notwithstanding any other provision of law, whether a domestic animal, domestic animal product or

other property is condemned by the department and slaughtered or destroyed under section 2331 or voluntarily slaughtered or destroyed by the owner under section 2332 to eradicate or prevent the spread of avian influenza, the amount payable by the department shall in all cases be the same percentage of appraised value as determined by the department. All other provisions of sections 2331 and 2332 shall apply to any payment under this subsection.
(Mar. 24, 1998, P.L.217, No.39, eff. imd.)

§ 2334. Report on insurance or cost-sharing program.

On or before 12 months from the effective date of this chapter, the department shall submit to the Agriculture and Rural Affairs Committee of the Senate and the Agriculture and Rural Affairs Committee of the House of Representatives a report on the feasibility of establishing an insurance or other cost-sharing program in lieu of indemnification under section 2331 (relating to indemnification) to compensate owners of domestic animals which are condemned and destroyed by the department to prevent the spread of disease or contamination.

§ 2335. Contract growers.

On or before 12 months from the effective date of this chapter, the department shall submit to the Agriculture and Rural Affairs Committee of the Senate and the Agriculture and Rural Affairs Committee of the House of Representatives a report regarding the feasibility of paying a portion of the indemnification or depopulation incentive to a person who raises domestic animals under contract for the owner of such animals and a portion to the owner when the domestic animals are condemned and destroyed to prevent the spread of a transmissible disease or hazardous substance. In preparing the report, the department shall consider ways in which the owner and the person under contract to the owner would share the indemnification or the depopulation incentive in proportion to the loss which each incurred.

SUBCHAPTER D
DEALERS, AGENTS AND HAULERS OF DOMESTIC ANIMALS OR DEAD DOMESTIC ANIMALS

Sec.

2341. General authority.
2342. License of dealers and haulers.
2343. Licensure of agents.
2344. Verification of application.
2345. License fees.
2346. Term of license.
2347. Posting and display of license.
2348. Denial, suspension or revocation of license.
2349. Records and inspections.

Cross References. Subchapter D is referred to in section 2388 of this title.

§ 2341. General authority.

The department shall have authority to regulate the activities, facilities and equipment of domestic animal or dead domestic animal dealers, agents and haulers for the purpose of assuring the sanitary handling of dead domestic animals and the sanitary handling, marketing and exchange of domestic animals.

§ 2342. License of dealers and haulers.

(a) Requirement.--No person shall engage in or carry on the business of a dealer or hauler of domestic animals or of dead

domestic animals or act as an agent for a dealer or hauler, unless such person is duly licensed by the department. With respect to dealers of dogs, the requirements of this subchapter are in addition to the requirements under the act of December 7, 1982 (P.L.784, No.225), known as the Dog Law.

(b) Application.--Application for a dealer's or hauler's license shall be made on a form furnished by the department. The form shall contain such information as the department may reasonably require to determine the applicant's identity, competency and eligibility.

§ 2343. Licensure of agents.

(a) General rule.--Except as provided in subsection (b), a domestic animal or dead domestic animal dealer or hauler who applies for or holds a dealer's or hauler's license may designate any person to act as an agent on behalf of that dealer or hauler. The designation shall be made either on the domestic animal or dead domestic animal dealer's or hauler's license application form or by a written notice to the department requesting the issuance of an agent's license. The department may require such additional information as is necessary to determine the identity, competency and eligibility of an applicant for an agent's license. A dealer or hauler shall be accountable and responsible for contracts made by any of its licensed agents.

(b) Exception.--Notwithstanding subsection (a), a dealer of dogs may not designate a person to act as an agent on behalf of the dealer.

§ 2344. Verification of application.

An applicant for a license under this subchapter shall sign the license application, and such signature shall serve to affirm that the information contained in the application is true and correct. An application and the information contained therein for licensure under this chapter shall be subject to the provisions of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

§ 2345. License fees.

The fee for a domestic animal or dead domestic animal dealer's or hauler's license is $50. If a person is a dealer of dogs and is licensed under the act of December 7, 1982 (P.L.784, No.225), known as the Dog Law, there shall be no fee for licensure under this section. The fee for an agent's license is $25. These fees shall be paid prior to the issuance of a license by the department. The department may change these license fees through regulations.

§ 2346. Term of license.

A license issued under this subchapter shall expire at the end of the calendar year for which it was issued, except that licensure shall be continued, pending renewal or denial by the department if the renewal application is received by the department no later than December 1 of the preceding calendar year.

§ 2347. Posting and display of license.

Any person licensed under this subchapter and conducting business under such a license shall post a copy of the license furnished by the department in or at the place of business of the licensee. The license shall be posted and exposed for viewing by those persons conducting the business which is the subject of the license and for inspection by the department. The licensee and any agents of the licensee shall carry a license verification card issued by the department at all times when acting as a dealer, agent or hauler. This license verification card shall be exhibited to persons when negotiating

with or soliciting business from them and to the department upon request.

§ 2348. Denial, suspension or revocation of license.

The department may, after due notice and an opportunity for a hearing, deny, suspend, revoke or modify a license issued under this subchapter if the department finds that the applicant or licensee has violated any provision of this chapter or its related regulations or finds the existence of any of the following:

(1) the applicant or licensee has violated the laws of the United States or this Commonwealth or official regulations governing the interstate or intrastate movement, shipment or transportation of animals;

(2) the applicant or licensee has made false or misleading statements or has fraudulently misrepresented the health or physical condition of domestic animals with regard to official tests or quantity of domestic animals or in the buying or receiving of domestic animals or in the receiving, selling, exchanging or shipping of domestic animals, including soliciting or negotiating the sale, resale, exchange or shipment of domestic animals;

(3) the applicant or licensee has engaged in a continued course of dealings of such a nature as to satisfy the department of the inability or unwillingness of the applicant or licensee to properly conduct the business of a dealer, hauler or agent in accordance with the requirements of this chapter;

(4) the applicant or licensee has failed to practice measures of sanitation prescribed by the department for premises or conveyances used for the confining, stabling, yarding, housing, holding or transporting of domestic animals; or

(5) the applicant or licensee has failed to keep records required by the department or by law or has refused to allow inspections or to produce books, accounts or records of transactions in the carrying on of the business for which such license is requested or granted.

§ 2349. Records and inspections.

Every dealer, agent and hauler shall keep such accounts, records and memoranda as are determined by the department to be sufficient to identify all living or dead domestic animals handled and their origin and disposition to fully and clearly disclose all transactions involved in his business, including the true ownership of such business by stockholders or otherwise. Every dealer, agent and hauler shall also keep records of such health certifications and sanitary measures as are required under the provisions of this chapter or its regulations. The department may investigate the records of any applicant or licensee under this subchapter. The applicant or licensee shall provide its records upon the department's request. Information unrelated to the purpose of the investigation and relating to the general business of the applicant or licensee shall be deemed to be of confidential nature by the department. The department shall conduct such inspections as are necessary to assure the sanitary and humane handling of domestic animals.

SUBCHAPTER E
DISPOSAL OF DEAD DOMESTIC ANIMALS AND ANIMAL WASTE

Sec.

2351. General authority.
2352. Disposal of dead domestic animals.
2353. Disposal of animal waste.
2354. Licensure requirement of dead domestic animal disposal businesses.
2355. Licensing procedure.
2356. Conditions of licensure.
2357. Denial, suspension or revocation of license.

Cross References. Subchapter E is referred to in section 2388 of this title.

§ 2351. General authority.

The department shall have the authority and the duty to cause the sanitary and safe disposal of dead domestic animals, domestic animal products and domestic animal parts, tissues, excrement and other wastes to prevent the spread of transmissible diseases or dangerous transmissible diseases or the spread of contamination by hazardous substances. This subchapter shall not apply to the disposal of carcasses of domestic animals slaughtered for human food nor to the premises or the rendering operations on the premises of a licensed slaughter establishment subject to official Federal or State inspection, provided that such inspection includes inspection of the rendering operations.

§ 2352. Disposal of dead domestic animals.

(a) Requirements.--The following requirements shall be met regarding the disposal of the bodies of dead domestic animals:

(1) Persons owning or possessing domestic animals that they know to have died of dangerous transmissible disease shall report the occurrence of the disease to the department and dispose of the domestic animals under the supervision and instruction of the department.

(2) Persons caring for or owning domestic animals that have died shall prevent exposure of the carcasses of such dead domestic animals to other living animals, domestic animals and the public and shall dispose of the carcass within 48 hours after the domestic animal dies. Disposal shall be accomplished in accordance with the requirements of this chapter.

(3) Dead domestic animals, parts of dead domestic animals, offal and animal waste may not be transported on public highways for any purpose unless such materials are transported in a manner that precludes contamination of the environment or danger to animal or public health.

(4) Dead domestic animals, parts of dead domestic animals, offal and animal waste shall be disposed of only in accordance with one of the following methods or a method hereafter approved by the department:

(i) Burial in accordance with regulations governing water quality.

(ii) Incineration in accordance with regulations governing air quality.

(iii) Processing by rendering, fermenting, composting or other method according to procedures and product safety standards established by the department.

(b) Feeding restricted.--No uncooked dead animal or uncooked dead domestic animal parts, including offal of any description, shall be fed to domestic animals unless processed in accordance with regulations adopted by the department.

(c) Importation restricted.--No dead domestic animal, offal or parts of dead domestic animals may be transported into this

Commonwealth unless transported directly to a diagnostic laboratory or consigned and delivered to a dead domestic animal disposal plant licensed by the department.

§ 2353. Disposal of animal waste.

Animal waste known or suspected to have been exposed to a dangerous transmissible disease or hazardous substance shall be disposed of in accordance with regulations attendant to this chapter.

§ 2354. Licensure requirement of dead domestic animal disposal businesses.

Any person who purchases or receives for disposal a dead domestic animal, domestic animal part or potentially infectious animal waste shall be deemed to be in the business of dead domestic animal disposal and shall be licensed by the department to engage in and conduct such activity.

§ 2355. Licensing procedure.

(a) Applications and fees.--Any person intending to operate a dead domestic animal disposal business within this Commonwealth shall, prior to the commencement of business, file an application with the department for the issuance of a dead domestic animal disposal business license. The application shall be made on a form provided by the department. A license fee of $100 shall be submitted to the department for each dead domestic animal disposal plant to be operated by the applicant within this Commonwealth. This license fee may be changed by the department through regulations.

(b) Term of license and renewal.--A license issued under this subchapter shall expire as of the end of the calendar year for which it was issued, except that licensure shall be continued pending renewal or denial by the department if the renewal application is received by the department no later than December 1 immediately preceding the calendar year for which license renewal is sought.

§ 2356. Conditions of licensure.

(a) Inspections.--As a precondition to the issuance of a license under this subchapter and as a continuing condition of such licensure, the department shall inspect an applicant's or licensee's dead domestic animal disposal plants, facilities, equipment or vehicles for compliance with this chapter and its attendant regulations.

(b) Disposal methods.--All carcasses, domestic animal parts, offal or other animal waste received or generated by a licensee under this subchapter shall be processed in accordance with such time limits, sanitation standards, personnel requirements and biosecurity standards as are necessary to prevent the spread of transmissible disease or dangerous transmissible disease. The department may formalize these limits or standards through regulation.

Cross References. Section 2356 is referred to in section 2357 of this title.

§ 2357. Denial, suspension or revocation of license.

An application or license under this subchapter may be denied, suspended or revoked if the department determines that any of the conditions of licensure set forth in section 2356 (relating to conditions of licensure) have been violated or if the department determines that a deficiency or violation on the applicant's or licensee's part had not been corrected within the time limit set forth in a written notice of deficiency or violation issued to the applicant or licensee by the department.

SUBCHAPTER F
SLAUGHTER AND PROCESSING OF DOMESTIC ANIMALS

Sec.
2361. General authority.
2362. Humane methods of slaughtering domestic animals.

Cross References. Subchapter F is referred to in section 2380.1 of this title.

§ 2361. General authority.

The department shall have authority to regulate the destruction, slaughter or processing of domestic animals in order to assure the proper treatment of domestic animals and the safety and quality of food of domestic animal origin. The department may:

(1) Establish standards for the humane slaughter of domestic animals.

(2) Regulate the slaughter and processing of domestic animals for human or animal consumption and may require the licensure of slaughter and processing establishments.

(3) Establish minimum standards regarding the health and quality of domestic animals permitted to be processed for human consumption or animal feed.

§ 2362. Humane methods of slaughtering domestic animals.

(a) Humane methods required.--

(1) Humane methods shall be used in the handling of domestic animals for slaughter and in the actual bleeding and slaughter of domestic animals.

(2) The use of a manually operated hammer, sledge or poleax by slaughterers, packers or stockyard operators during slaughtering operations is not a humane method of slaughter.

(b) Ritual slaughter.--Subsection (a) shall not apply to the operator of a commercial establishment with respect to the positioning and ritual slaughter of cows, poultry and sheep until one year after the department finds and notifies the operator that there is available at reasonable cost a ritually acceptable, practicable and humane method of handling or otherwise preparing conscious calves, poultry and sheep for slaughter.

(c) Exception.--Subsection (a) shall not apply to a farmer or other person slaughtering domestic animals owned by the farmer or person.

(d) Construction of section.--This section shall not be construed to prohibit, abridge or in any way hinder the religious freedom of any person or group.

(e) Review.--Determinations made by the department under authority of this section shall be subject to review in the manner provided by 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(f) Applicability.--Where the slaughtering operations of slaughterers, packers or stockyard operators who would otherwise be subject to the requirements of this section are subject to inspection by the United States Department of Agriculture, applicable Federal law shall control, and the determination of whether slaughter is conducted by humane methods shall be made by the United States Department of Agriculture in accordance with Federal authority on the subject of humane methods of slaughter.

SUBCHAPTER G
GARBAGE FEEDING BUSINESS

Sec.

2371. Licensure requirement.
2372. Application and fee.
2373. Issuance of license.
2374. Term of license and renewal.
2375. Posting of license.
2376. Heating certain garbage before feeding.
2377. Prohibitions and conditions.
2378. Inspections.
2379. Notice to remedy and denial, suspension or revocation of license.

Cross References. Subchapter G is referred to in sections 2324, 2388 of this title.

§ 2371. Licensure requirement.

Any person who feeds garbage to domestic animals shall be deemed to be engaged in the garbage feeding business. It shall be the duty of any such person to obtain a license from the department as a precondition to operating a garbage feeding business within this Commonwealth and to thereafter maintain a current license while such business is in operation.

§ 2372. Application and fee.

Any person intending to operate a garbage feeding business or plant within this Commonwealth shall, prior to the commencement of operation, file an application with the department for the issuance of a garbage feeding business license. The application shall be made on a form provided by the department. A license fee of $100 shall be submitted to the department for each garbage feeding business to be operated by the applicant within this Commonwealth. This license fee may be changed by the department through regulations. The Commonwealth, political subdivisions and charitable or religious institutions shall not be required to pay this license fee.

§ 2373. Issuance of license.

The department shall issue a license under this subchapter when all of the following are met:

(1) Approval of the application.

(2) Receipt of the appropriate license fee, if any is required.

(3) Inspection of the premises designated on the application as the place of business.

(4) Approval of the buildings, equipment and sanitary conditions.

(5) Such other requirements as the department may deem necessary.

§ 2374. Term of license and renewal.

A license issued under this subchapter shall expire at the end of the calendar year for which it is issued, except that licensure shall be continued pending renewal or denial by the department if the renewal application is received by the department no later than December 1 immediately preceding the calendar year for which the license renewal is sought.

§ 2375. Posting of license.

Any person licensed under this section and operating a garbage feeding business shall post a copy of the license in a conspicuous place in or at the place of business.

§ 2376. Heating certain garbage before feeding.

All garbage that may contain animals, animal parts or animal products shall be heated thoroughly to a temperature of at least 212 degrees Fahrenheit for a period of at least 30 minutes before being fed to domestic animals, unless the garbage has

been treated in some other manner that has been approved by the department. Each lot, batch or unit of garbage shall be heated in its entirety to the required temperature and for the required length of time. A true and accurate record of garbage so processed shall be kept and maintained by the operator of a garbage feeding business or plant for a period of not less than one year. This record shall be made available to the department upon its request.

§ 2377. Prohibitions and conditions.

(a) Sanitation.--All garbage feeding businesses shall be maintained in a reasonably sanitary condition. Approved methods to exterminate flies, vermin and rodents shall be employed regularly.

(b) Slaughter of certain domestic animals prohibited.--It shall be unlawful to slaughter domestic animals for human consumption on any premises used as a garbage feeding business or in any building located on any such premises.

(c) Construction and management.--

(1) Feeding shall be done on water-tight floors, properly drained and constructed so as to be maintained in a sanitary condition.

(2) Any place where feeds are mixed and prepared and any building connected with garbage feeding operations shall be maintained in a sanitary condition and good repair.

(3) Manure and other refuse and rubbish shall not be allowed to accumulate within the buildings or upon the premises of a garbage feeding business to create unsightly or unsanitary conditions.

(4) The facility shall be constructed so that domestic animals are unable to have access to untreated garbage or materials that have come into contact with untreated garbage.

§ 2378. Inspections.

As a precondition to the issuance of a garbage feeding business license and as a continuing condition of such licensure, the department may inspect an applicant's or licensee's facilities for compliance with this chapter and its attendant regulations.

§ 2379. Notice to remedy and denial, suspension or revocation of license.

The department shall provide an applicant or licensee under this subchapter with written notice of any violation of this subchapter or any regulation relating to garbage feeding businesses. The written notice shall set forth the time within which the applicant or licensee must correct the condition. If an applicant or licensee fails to correct or eliminate such a violation within the time set forth in the written notice, the department may deny, suspend or revoke the license and seek other penalties as are authorized by this chapter.

SUBCHAPTER G.1
CERVIDAE LIVESTOCK OPERATIONS

Sec.

2380.1. Definitions.
2380.2. License required.
2380.3. Application.
2380.4. Issuance.
2380.5. Term; renewal.
2380.6. Keeping and handling of cervids.
2380.7. Periodic inspections.
2380.8. Violations by licensees.

2380.9. Game and Wildlife Code and regulations.

Enactment. Subchapter G.1 was added December 9, 2002, P.L.1495, No.190, effective immediately unless otherwise noted.

§ 2380.1. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A person applying for a license.

"Cervid." Any member of the Cervidae family and any hybrid.

"Cervidae livestock family." Members of the Cervidae family including deer, elk, moose, reindeer, caribou and hybrids of these animals owned and maintained by a licensee under this subchapter. The term also includes the germ plasm, embryos and fertile ova of these animals.

"Cervidae livestock operation." A normal agricultural operation which contains behind fences privately owned members of the Cervidae livestock family involved in the production, growing, breeding, using, harvesting, transporting, exporting, importing or marketing of Cervidae species or Cervidae products. The term does not include an animal slaughter facility regulated under Subchapter F (relating to slaughter and processing of domestic animals) or a menagerie permitted under 34 Pa.C.S. § 2964 (relating to menagerie permits).

"Harvesting." Any lethal or nonlethal means of collecting cervids or products from cervids on Cervidae livestock operations.

"License." A license issued by the Department of Agriculture to operate a Cervidae livestock operation.

"Licensee." A person that holds a license.

"Normal agricultural operation." As defined under section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled "An Act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

(June 29, 2006, P.L.206, No.51, eff. 60 days)

2006 Amendment. Act 51 amended the def. of "license" and added the defs. of "cervid," "cervidae livestock family," "cervidae livestock operation," "harvesting" and "normal agricultural operation." See the preamble to Act 51 in the appendix to this title for special provisions relating to legislative intent.

§ 2380.2. License required.

A person may not operate a Cervidae livestock operation within this Commonwealth unless the person has a license. A separate license is required for each Cervidae livestock operation.

Effective Date. Section 9(1) of Act 190 of 2002 provided that section 2380.2 shall take effect in 120 days.

§ 2380.3. Application.

(a) Form.--An application for licensure, including license renewal, must be made on a form prescribed by the department.

(b) Fee.--An application for a license or for renewal of a license shall be accompanied by a fee of $150. Notwithstanding any other provision of this chapter to the contrary, license fees collected under this section shall be deposited in the Cervidae Livestock Operation Account, which is established as a restricted account in the State Treasury. Moneys in the Cervidae Livestock Operation Account are appropriated on a continuing basis to the department for the purpose of

administering this subchapter. All interest and earnings received from investment or deposit of the moneys in the Cervidae Livestock Operation Account shall be paid into the account for the purpose authorized by this subsection. Any unexpended moneys and any interest or earnings on the money in the Cervidae Livestock Operation Account may not be transferred or revert to the General Fund but shall remain in the account to be used by the department for the purpose specified in this subsection.
(Nov. 23, 2010, P.L.1142, No.116, eff. 60 days)

§ 2380.4. Issuance.

(a) Inspection.--The department shall inspect the premises of and investigate each applicant. An inspection under this subsection may be made by the department or an agent of the department, including a licensed doctor of veterinary medicine accredited by the department.

(b) Issuance.--Subject to subsection (c)(3), the department shall issue a license if it determines, after inspection of the premises and investigation of the applicant, all of the following:

(1) The premises, including fences, buildings, equipment and sanitary conditions, comply with this subchapter and regulations of the department under this subchapter.

(2) The applicant is able to conduct a Cervidae livestock operation in compliance with this subchapter and regulations of the department under this subchapter.

(c) Provisional license.--

(1) A Cervidae livestock operation which is in operation on the effective date of this subsection but which was not, prior to the effective date of this subsection, subject to licensure shall be granted a provisional license.

(2) Within one year of the effective date of this subsection, the department shall, for each provisional licensee:

(i) perform the investigation and inspection under this section; and

(ii) either issue a license or deny the application.

(3) If the department does not comply with the time requirement under paragraph (2) for a license application by a provisional licensee, a license shall be deemed to be issued.
(June 29, 2006, P.L.206, No.51, eff. 60 days)

2006 Amendment. See the preamble to Act 51 in the appendix to this title for special provisions relating to legislative intent.

Cross References. Section 2380.4 is referred to in section 2380.5 of this title.

§ 2380.5. Term; renewal.

(a) Term.--A license is valid for a period of two years from the date of:

(1) issuance under section 2380.4(b) (relating to issuance);

(2) deemed issuance under section 2380.4(c)(3); or

(3) renewal under subsection (b).

(b) Renewal.--A license shall be renewed upon application if the department determines all of the following:

(1) The licensee has not been cited for a violation of this subchapter or a regulation of the department under this subchapter.

(2) There is no reason to believe that the licensee is unable to conduct a Cervidae livestock operation in

compliance with this subchapter and regulations of the department under this subchapter.
(June 29, 2006, P.L.206, No.51, eff. 60 days)

2006 Amendment. See the preamble to Act 51 in the appendix to this title for special provisions relating to legislative intent.

§ 2380.6. Keeping and handling of cervids.

(a) Pens and enclosures.--The department shall adopt regulations concerning the type of pens and enclosures used for Cervidae livestock operations. Regulations shall ensure that all of the following apply:

(1) The fenced enclosure surrounds the outside perimeter of the operation and is designed to protect the public and confine the privately owned cervids. Regulations under this paragraph may require a fence height of not greater than ten feet from the ground to the top.

(2) The premises is adequate to provide for the health and comfort of the cervids.

(b) Marking cervids contained at Cervidae livestock operations.--A person may not transfer possession of a cervid unless that cervid is marked by both of the following:

(1) At least one permanent unique identifier, such as a legible tattoo, United States Department of Agriculture (USDA) approved ear tag, breed registration or other department-approved identification method. If a microchip is used, the cervid owner must provide the necessary reader.

(2) At least one temporary identifier.

(c) Live Cervidae.--Cervids may be brought onto the premises through interstate or intrastate commerce and may be removed from the premises or relocated to another premises in a manner consistent with this chapter and regulations promulgated by the department. On delivery of a live cervid, the Cervidae livestock operation shall prepare and deliver to the shipper, purchaser or consignee a receipt, detailed invoice or consignment document including the date, name and address of purchaser or person to whom sold or consigned, the quantity, sex and species of the cervid and the name and address of the Cervidae livestock operation.

(d) Dead Cervidae.--Cervids and cervid products may be removed from the premises or relocated to another premises in a manner consistent with this chapter and regulations promulgated by the department. Prior to delivery and removal from the Cervidae livestock operation premises, the Cervidae livestock operation shall place the dead cervid or part of a cervid in a package or container or shall attach a label to it. The package, container or label shall have printed upon it the name, address and telephone number of the Cervidae livestock operation who produced the cervid. The Cervidae livestock operation shall also issue a receipt, detailed invoice or consignment document including the date of shipment or sale, the name of the shipper, purchaser or consignee, the quantity and sex and species of the cervid so shipped or sold and the name and address and license number of the Cervidae livestock operation shipping, consigning or selling cervids. A dead cervid produced under the authority of the Cervidae livestock operation may not be removed from its package or container or have removed from it the label provided for in this subsection until final consumption or disposal.

(e) Receipt for shipping cervids.--Each shipment of cervids, living or dead, or parts of cervids raised or held on a Cervidae livestock operation shall be accompanied by a receipt, detailed

invoice or consignment document issued by the Cervidae livestock operation describing the shipment and stating the origin of the shipment, date, what is being shipped, destination and any other information required by the department. The receipt, detailed invoice or consignment document shall be available for examination during normal business hours until the shipment reaches its final destination, at which time it becomes part of the consignee's record. The consignee's record shall be retained for three years.

(f) Records.--A Cervidae livestock operation shall maintain records of acquisitions and disposals of cervids as well as cervids born and slaughtered on the premises. Records shall be in ink, written in English, and include the full name and address of the person with whom a transaction is conducted. Records shall be available for inspection at reasonable hours. Entries shall be made on the day of transaction. The records shall be kept for three years and shall be the basis of any reports required by the department.

(g) Importation.--Before importing a cervid, the licensee must first obtain an importation permit from the department. An application for an importation permit must state the name and address of the applicant, name and address of the person supplying the cervid, common and scientific name and number of cervids to be covered by the permit, purpose for which the cervid is being imported, qualifications of the applicant to use the cervid for the stated purpose and the location where the cervid will be housed or retained. The application must be received by the department at least ten days prior to the proposed import date. If the cervid is to be purchased at auction, the name and address of the person supplying the cervid and number of cervids purchased shall be reported to the department by telephone, fax or electronic means on the date of purchase. The permittee must receive a confirmation number before the animal is imported. A copy of the completed permit shall be forwarded to the permittee.

(June 29, 2006, P.L.206, No.51, eff. 60 days)

2006 Amendment. Act 51 amended subsecs. (a), (c) and (d). See the preamble to Act 51 in the appendix to this title for special provisions relating to legislative intent.

§ 2380.7. Periodic inspections.

During regular business hours, the department is authorized to inspect the premises of a licensee for compliance with this subchapter and regulations under this subchapter.

§ 2380.8. Violations by licensees.

(a) Notice.--The department must provide a licensee with written notice of a violation of this subchapter or a regulation under this subchapter. The notice must provide a time period within which to correct the violation.

(b) Sanctions.--

(1) If the licensee does not correct a violation specified in a notice under subsection (a) within the specified time period, the department may take the following actions:

(i) Suspend the license.

(ii) Revoke the license.

(iii) Seek enforcement under section 2383 (relating to enforcement and penalties).

(2) Paragraph (1)(i) and (ii) are subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 2380.9. Game and Wildlife Code and regulations.

(a) Code.--The provisions of 34 Pa.C.S. (relating to game) are repealed insofar as they are inconsistent with this subchapter.

(b) Regulations.--

(1) The provisions of 58 Pa. Code Pt. III (relating to Game Commission) are abrogated insofar as they are inconsistent with this subchapter.

(2) Notwithstanding any other provision of law, the Pennsylvania Game Commission has no authority to promulgate regulations on Cervidae livestock operations.

(June 29, 2006, P.L.206, No.51, eff. 60 days)

2006 Amendment. See the preamble to Act 51 in the appendix to this title for special provisions relating to legislative intent.

SUBCHAPTER H
ADMINISTRATIVE PROVISIONS

Sec.

2381. Cooperation.
2382. Regulations.
2383. Enforcement and penalties.
2384. Disposition of fees, fines and civil penalties.
2385. Interference with officer or employee of department.
2386. Civil remedy.
2387. Inapplicability of penal cruelty to animals statutes.
2388. Exemption for governmental entities.
2389. Preemption of local laws and regulations.

§ 2381. Cooperation.

In order to extend the efficiency of the department with regard to the administration and implementation of this chapter, the department is authorized to cooperate with the appropriate regulatory agencies of the Federal Government, any other state or foreign nation.

§ 2382. Regulations.

(a) General authority.--The department shall promulgate and adopt rules and regulations necessary for the administration and implementation of this chapter.

(b) Preexisting regulations.--Except to the extent that they are inconsistent with any provision of this chapter, regulations in effect on the effective date of this chapter shall continue in effect unless subsequently modified by regulations promulgated by the department.

(c) Fees.--The department may impose licensure and user fees to recover costs of supplies, equipment, administration and other fixed overhead costs to provide services and voluntary programs to the domestic animal industry. Unless otherwise specified in this chapter, such fees shall be established by the department through regulations.

§ 2383. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, any person who violates any of the provisions of this chapter or any rule, regulation or order made under this chapter:

(1) For a first offense, commits a summary offense and shall, upon conviction, be sentenced for each offense to pay a fine of not less than $100 nor more than $300 and costs of prosecution and, in default of payment of such fine and costs, shall be sentenced to undergo imprisonment for a period of not more than 90 days.

(2) For a subsequent offense committed within three years of a prior conviction for any violation of this chapter or any rule, regulation or order made under this chapter, commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $1,000 nor more than $5,000 or to imprisonment for not more than two years, or both, at the discretion of the court.

(b) Civil penalties.--

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted thereunder or any order issued pursuant thereto, the department may assess a civil penalty of not more than $10,000 upon an individual or business for each offense.

(2) No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with law.

(3) In determining the amount of the penalty, the department shall consider the gravity of the violation. The department may issue a warning in lieu of assessing a penalty.

(4) In cases of inability to collect such civil penalty or failure of any person to pay all or such portion of the penalty as the department may determine, the department may refer the matter to the Office of Attorney General, which shall recover such amount by action in the appropriate court.

Cross References. Section 2383 is referred to in sections 2380.8, 2386 of this title.

§ 2384. Disposition of fees, fines and civil penalties.

All moneys derived from fees, fines and civil penalties collected or imposed under this chapter shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture to administer the provisions of this chapter.

§ 2385. Interference with officer or employee of department.

A person who willfully or intentionally interferes with an employee or officer of the department in the performance of duties or activities authorized under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a term of imprisonment of not more than one year or a fine of not more than $2,500, or both.

§ 2386. Civil remedy.

In addition to any other remedies provided for in this chapter, the Attorney General, at the request of the department, may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business an action in equity for an injunction to restrain any and all violations of this chapter or the rules and regulations promulgated under this chapter or any order issued pursuant to this chapter from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a preliminary injunction if it finds that the defendant is engaging in conduct that is unlawful under this chapter or is engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court in such equity proceedings may levy civil penalties under section 2383 (relating to enforcement and penalties).

§ 2387. Inapplicability of penal cruelty to animals statutes.

No action taken by the department or decision not to act made by the department or condition or action required of another by the written instruction of the department shall be construed as cruelty to animals under any penal statute of this Commonwealth provided that such an action, decision or condition is taken, made or required under the authority of this chapter and its attendant regulations.

§ 2388. Exemption for governmental entities.

All agencies or commissions of the Federal Government and the Commonwealth shall be exempt from the licensure requirements of Subchapters D (relating to dealers, agents and haulers of domestic animals or dead domestic animals), E (relating to disposal of dead domestic animals and animal waste) and G (relating to garbage feeding business).

§ 2389. Preemption of local laws and regulations.

This chapter and its provisions are of Statewide concern and shall have eminence over any ordinances, resolutions and regulations of political subdivisions which pertain to transmissible diseases of domestic animals as defined in this chapter; the whole field of regulation regarding the identification of domestic animals; the detection, containment or eradication of dangerous transmissible diseases and hazardous substances; the licensure of domestic animal or dead domestic animal dealers, agents and haulers; the procedure for disposal of dead domestic animals and domestic animal waste; the procedure for the slaughter and processing of domestic animals; humane husbandry practices and the licensure and conditions of garbage feeding businesses.

SUBCHAPTER I
SWINE HUNTING PRESERVES

Sec.

2390. Regulation of swine hunting preserves.

Enactment. Subchapter I was added June 24, 2013, P.L.145, No.25, effective in 60 days.

§ 2390. Regulation of swine hunting preserves.

(a) Promulgation.--The department shall promulgate regulations for swine hunting preserves consistent with section 14 of the department's General Quarantine Order on the Importation and Intrastate Movement of Swine, published at 39 Pa.B. 5442 (September 19, 2009).

(b) Time.--The department shall promulgate the regulations under subsection (a) within two years of the effective date of this subsection.

(c) Sterilization of male swine.--On and after the effective date of this section, it shall be unlawful to release onto a swine hunting preserve a male swine that has not been sterilized.

(d) Pennsylvania Game Commission.--Notwithstanding any other law, the Pennsylvania Game Commission shall have no authority to promulgate regulations on swine hunting preserves, and no regulation promulgated under this section shall be construed to be governed by 34 Pa.C.S. (relating to game).

CHAPTER 25
ANIMAL EXHIBITION SANITATION

Sec.

2501. Definitions.
2502. Sanitation standards.
2503. Administration.
2504. Penalty.

Enactment. Chapter 25 was added Dec. 9, 2002, P.L.1650, No.211, effective in 120 days unless otherwise noted.

§ 2501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adequate hand-cleansing facility." A facility which has:

(1) running water and soap or other hand-cleansing methods approved by the department; and

(2) hand-drying equipment or disposable towels.

The term does not include a communal basin.

"Advertise." To notify the public of an event by:

(1) publication in a newspaper, magazine or other publication of general circulation;

(2) announcement on television or radio;

(3) public mailing or distribution of written material; or

(4) posting of written material at a location other than the animal exhibition grounds.

"Agricultural fair." An agricultural exhibition which is conducted in a manner to make it eligible for a grant under the act of July 8, 1986 (P.L.437, No.92), known as the Pennsylvania Agricultural Fair Act.

"Animal." A living nonhuman organism having sensation and the power of voluntary movement and requiring for its existence oxygen and organic food. The term does not include a fish or an aquatic animal.

"Animal exhibition." As follows:

(1) The term shall include:

(i) an agricultural fair;

(ii) a petting zoo;

(iii) an event where animals are displayed on animal exhibition grounds for view and physical contact with humans, if the operator advertises the event;

(iv) an event where animals are displayed on animal exhibition grounds for view and physical contact with humans, if the operator charges an admission fee for access to the animals; or

(v) an event where animals are displayed on animal exhibition grounds for view and physical contact with humans, if there is a retail food establishment on the grounds.

(2) The term shall not include:

(i) an event, other than an agricultural fair, sponsored by an agricultural organization and held for not more than two days per year;

(ii) an event authorized by a farmer to permit individuals to view or have contact with animals the farmer is raising or keeping in the course of "normal agricultural operation" as defined in the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances," which is not held on animal exhibition grounds where there is a retail food establishment;

(iii) an event performed or authorized in the normal course of operation of an equine boarding, riding or

training enterprise by the person that operates the enterprise;

(iv) an event performed or authorized on the premises of a pet store by the person that operates the store;

(v) an event sponsored by or authorized by a recognized dog or cat breed association, dog or cat club or recognized kennel association;

(vi) an event performed or authorized by an animal rescue organization, a humane society or association for the prevention of cruelty to animals; or

(vii) an event excluded by regulation of the department.

"Animal exhibition grounds." The premises on which an animal exhibition is conducted.

"Interstate certificate of veterinary inspection." A legible official document that is:

(1) made on a form issued by the chief livestock health official of the state of origin or the United States Department of Agriculture;

(2) prepared by an accredited veterinarian of the state of origin certifying the health of the animal described in the certificate; and

(3) validated by the chief livestock health official of the state of origin.

"Operator." A person that conducts an animal exhibition. The term includes a person that contracts with another to conduct an animal exhibition.

"Pennsylvania health certificate." A legible official document that is:

(1) made on a form (AAI-13) provided by the department; and

(2) prepared by an accredited Pennsylvania veterinarian or a representative of the department certifying the health of animals described in the certificate according to the health requirements established under Chapter 23 (relating to domestic animals) and regulations promulgated under Chapter 23.

"Veterinarian consultation relationship." A relationship in which the owner or caretaker of the animal has assumed responsibility to consult a veterinarian and has agreed to follow the instructions of the veterinarian in relation to zoonotic diseases and implementing best management practices intended to reduce and prevent diseases.

"Zoonotic disease." A disease which is transmissible from an animal to a human being.

(June 27, 2013, P.L.172, No.31, eff. imd.)

2013 Amendment. Act 31 amended the def. of "veterinarian-client-patient relationship" and added the defs. of "interstate certificate of veterinary inspection" and "Pennsylvania health certificate."

§ 2502. Sanitation standards.

(a) Minimum.--The following sanitation standards are required to minimize the risk of contracting a zoonotic disease at an animal exhibition:

(1) An operator shall promote public awareness of the risk of contracting a zoonotic disease at the animal exhibition and of the measures necessary to minimize the risk of contraction by posting appropriate notices at the animal exhibition.

(2) An adequate hand-cleansing facility for adults and children shall be conveniently located on the animal exhibition grounds. The operator shall post appropriate notices which designate the location of the hand-cleansing facility required by this paragraph and encourage the cleansing of hands after touching animals, using the restroom and before eating.

(3) A person may not bring an animal to an animal exhibition unless the person provides the operator with one of the following:

(i) Except as provided under subparagraph (ii), a valid Pennsylvania health certificate or interstate certificate of veterinary inspection.

(ii) A signed statement by the person attesting that a veterinarian consultation relationship exists with regard to each animal to be exhibited, if a Pennsylvania health certificate or interstate certificate of veterinary inspection is not specifically required under Chapter 23 (relating to domestic animals) and regulations promulgated under Chapter 23.

(b) Additional.--The department may promulgate additional sanitation standards through regulations.

(June 27, 2013, P.L.172, No.31, eff. imd.)

2013 Amendment. Act 31 amended subsec. (a)(3).

§ 2503. Administration.

The department shall do all of the following:

(1) Access the Department of Health's aggregate data reports and other information relating to the occurrence of zoonotic diseases.

(2) In consultation with the Department of Health, promote public education and physician awareness of the risk, and the sanitation standards necessary to minimize the risk, of contracting a zoonotic disease. The primary emphasis of this paragraph shall be the need to cleanse hands after contact with animals to reduce the risk of contracting a zoonotic disease.

(3) Promulgate regulations necessary to administer this chapter.

(4) Implement and enforce this chapter.

§ 2504. Penalty.

(a) Imposition.--The department may assess an administrative penalty of up to $500 for each violation of this chapter or a regulation promulgated under this chapter.

(b) Procedure.--A penalty assessed under subsection (a) shall be subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

CHAPTER 27
TAXIDERMISTS

Sec.

2701. Definitions.
2702. Registration.
2703. Unlawful acts.
2704. Preemption.
2705. Duties.
2706. Recordkeeping.
2707. Reporting.

Enactment. Chapter 27 was added July 7, 2006, P.L.358, No.77, effective in 90 days.

§ 2701. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Specimen." Any of the following which are protected under this title, 30 Pa.C.S. (relating to fish) or 34 Pa.C.S. (relating to game):

(1) A bird or a part of a bird.
(2) An animal or a part of an animal.
(3) A fish or a part of a fish.
(4) A reptile or a part of a reptile.

§ 2702. Registration.

Any person who holds himself out to the public as a taxidermist or mounts any specimen shall register with the department on a form prescribed by the department. The registration shall include at a minimum the person's name, the business name, the address and telephone number and the person's or business tax identification number. For purposes of this section, the tax identification number may include any of the following:

(1) Federal employer identification number.
(2) Unemployment compensation account number.
(3) Social Security number.
(4) State personal income tax identification number.
(5) State sales tax number.
(6) Corporation tax number.
(7) State employer withholding number.
(8) Any other identification number acceptable to the department.

§ 2703. Unlawful acts.

A person commits a summary offense of the second degree and shall be subject to the penalty imposed under 34 Pa.C.S. § 925(b)(5) (relating to jurisdiction and penalties) if the person does any of the following:

(1) If the person is a taxidermist, mounts any specimen which was not lawfully killed or raised under authority of a propagating permit unless the owner of the specimen presents the taxidermist with a permit obtained from the Pennsylvania Game Commission or the Pennsylvania Fish Commission and, in the case of migratory birds, the required Federal permit.

(2) Mounts any specimen unless the owner of the specimen presents the person with a copy of a permit issued by the Pennsylvania Game Commission or the Pennsylvania Fish Commission. A taxidermist may accept a specimen for safekeeping and, after notifying the nearest Pennsylvania Game Commission or Pennsylvania Fish Commission officer, hold it until the owner obtains the necessary permit or for a period not to exceed 60 days.

(3) Violates the provisions of this chapter.

§ 2704. Preemption.

Nothing in this chapter shall preempt the requirements of any other Federal or State law.

§ 2705. Duties.

The department shall:

(1) Upon request, provide the Department of Revenue and the Department of Labor and Industry with information about registered taxidermists.

(2) Charge taxidermy registrants an annual fee of $100 to cover the costs of administering the registration system.

§ 2706. Recordkeeping.

A person registered under this chapter shall maintain an accurate record of all specimens that they mount. The record shall include the type of specimen mounted and the location where the specimen was harvested. The registrant shall make these records available to the department for inspection upon request by the Bureau of Animal Health and Diagnostic Services.

§ 2707. Reporting.

A person registered under this chapter shall report an unmarked Convention on International Trade in Endangered Species or threatened or endangered special specimen to the proper authority within 72 hours of receiving notice of the specimen.

PART V
SOIL AND CONSERVATION

Chapter

31. Conservation Excellence Grant Program

Enactment. Part V (Reserved) was added December 12, 1994, P.L.903, No.131, effective in 60 days.

Part Heading. The heading of Part V was amended July 1, 2019, P.L. 275 , No.39, effective in 60 days.

CHAPTER 31
CONSERVATION EXCELLENCE GRANT PROGRAM

Sec.

3101. Definitions.
3102. Establishment.
3103. Administration of program.
3104. Application guidelines.
3105. Grants, loans and tax credits.
3106. Project certification.
3107. Criteria for evaluation of applications.
3108. Application, review and authorization by commission.
3109. Assistance from county conservation districts.
3110. Distribution of funds.

Enactment. Chapter 31 was added July 1, 2019, P.L.275, No.39, effective in 60 days.

§ 3101. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural operation." The management and use of farming resources for the production of crops, livestock or poultry.

"Best management practice." A practice or combination of practices determined by the State Conservation Commission or United States Department of Agriculture Natural Resources and Conservation Service to be effective and practical, considering technological, economic and institutional factors, to manage nutrients and sediment to protect surface water and groundwater.

"Commission." The State Conservation Commission established under section 4 of the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Program." The Conservation Excellence Grant Program established under section 3102 (relating to establishment).

"USDA-NRCS." The United States Department of Agriculture Natural Resources and Conservation Service.

§ 3102. Establishment.

The Conservation Excellence Grant Program is established within the commission.

Cross References. Section 3102 is referred to in section 3101 of this title.

§ 3103. Administration of program.

The commission shall administer the program for the purpose of providing technical and financial assistance for the implementation of best management practice projects on agricultural operations in high-priority locations within this Commonwealth through grants, loans and tax credits, or a combination of all three, as authorized under section 4(7) of the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

§ 3104. Application guidelines.

The commission shall establish guidelines for the approval of applications for eligible projects under the program.

§ 3105. Grants, loans and tax credits.

(a) Awards.--The commission may award grants or loans or request that the Department of Revenue issue tax credits to applicants for eligible projects, including costs incurred to satisfy the certification requirements of section 3106 (relating to project certification), that the commission determines will further the purpose of the program.

(b) Grants.--Grants shall be awarded to the extent funding is made available by the General Assembly.

(c) Loans.--Loans under this section may be awarded through the Agriculture-Linked Investment Program or any other loan program approved by the commission.

(d) Tax credits.--Tax credits under this section may be awarded through the Resource Enhancement and Protection Tax Credit Program under Article XVII-E of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

§ 3106. Project certification.

The commission shall ensure that a project satisfies the requirements of the program in accordance with the following:

(1) Except as provided under paragraph (2), if a project's best management practice requires review and certification by a registered professional engineer under the applicable laws or regulations of this Commonwealth, the best management practice shall be certified by a registered professional engineer.

(2) Any other project shall be certified by a technical service provider, staff from a conservation district or the USDA-NRCS or any other person who has appropriate training and expertise and is approved by the commission.

Cross References. Section 3106 is referred to in sections 3105, 3108 of this title.

§ 3107. Criteria for evaluation of applications.

In approving applications for eligible projects under the program, the commission shall give priority to complete applications based upon the following criteria:

(1) Priority locations as follows and in this order:

(i) Counties designated by the Department of Environmental Protection as Tier 1 Chesapeake Bay counties.

(ii) Counties designated by the Department of Environmental Protection as Tier 2 and 3 Chesapeake Bay counties.

(iii) All other counties.

(2) Priority practices as follows:

(i) Livestock exclusion fencing.

(ii) Stream-side buffers.

(iii) Streambank restoration.

(iv) Barnyard and feedlot runoff abatement.

(v) Stream crossings.

(vi) Off-stream watering.

(vii) Manure storage facilities.

(viii) Nutrient management plans and manure management plans.

(ix) Conservation plans or agricultural erosion and sedimentation plans.

(x) Cover crops.

(xi) Any other priority practices approved by the commission.

(3) The level and extent of planning and technical assistance, such as inventory and evaluation, design work, permits and similar types of assistance, already completed to allow for accurate estimates of project costs and for completion of the project in a timely fashion.

(4) The extent to which an applicant is willing to accept a reasonable mix of grants, loans and tax credits or to supply nongovernmental matching funds for the project.

(5) Any other criteria as adopted by the commission.

Cross References. Section 3107 is referred to in section 3108 of this title.

§ 3108. Application, review and authorization by commission.

(a) Application process.--A person must apply to the commission for a grant, loan or tax credit for an eligible project under the program with an application created by the commission. The application must include all of the following information:

(1) The location of the project.

(2) The type of project.

(3) The status of the project.

(4) The type and combination of funding requested under the program.

(5) The total cost of the project.

(6) Any other information as required by the commission.

(b) Review.--The commission shall review complete applications based upon the criteria established under section 3107 (relating to criteria for evaluation of applications) on an ongoing basis and in the order received. Within 60 days of receipt of a complete application, the commission shall notify the applicant of all of the following:

(1) Whether the project is approved for funding under the program.

(2) The total amount of funds approved for the project.

(3) The amount of each type of funding approved for the project.

(c) Notice of completion.--Upon completion of a project funded under this program, the person who received approval for the project shall notify the commission of the completion of the project. The notice under this subsection shall include the required certification under section 3106 (relating to project certification).

(d) Inspection.--Projects funded under this program may be subject to inspection by the commission or the commission's designated agent.

§ 3109. Assistance from county conservation districts.

The commission may, as it deems appropriate, delegate certain duties and responsibilities under this chapter to county conservation districts that are willing to enter into an agreement to carry out these duties and responsibilities.

§ 3110. Distribution of funds.

The commission may advance funds to conservation districts for the purposes authorized by this chapter.

PART VI
DEVELOPMENT, MARKETING AND PROMOTION

Chapter

41. Weights and Measures
42. Aquacultural Development
45. Agricultural Commodities Marketing
46. Pennsylvania Preferred® Trademark
47. Crop Insurance
48. Agricultural Business Development Center

Enactment. Part VI was added December 12, 1994, P.L.903, No.131, effective in 60 days, unless otherwise noted.

CHAPTER 41
WEIGHTS AND MEASURES

Subchapter

A. General Provisions
B. Weights and Measures Generally
C. Public Weighmasters
D. Device Type Approval
E. Domestic Fuel Oil
F. Automotive Fuel Testing and Disclosure Program
G. Miscellaneous Provisions

Enactment. Chapter 41 was added December 18, 1996, P.L.1028, No.155, effective in 60 days.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

4101. Short title of chapter.
4102. Definitions.

§ 4101. Short title of chapter.

This chapter shall be known and may be cited as the Consolidated Weights and Measures Act.

§ 4102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bureau." The Bureau of Ride and Measurement Standards in the Department of Agriculture.

"Certified Examiner of Weights and Measures." An individual who has successfully completed the training course or courses prescribed by the National Institute of Standards and Technology

and who complies with certification standards promulgated under section 4110(a)(4) (relating to specific powers and duties of department; regulations).

"Certified parking meter inspector." An individual who is certified by the Department of Agriculture to inspect and certify the accuracy of parking meters.

"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." Commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section 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 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 the consumption or use.

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

"Director." The Director of the Bureau of Ride and Measurement Standards in the Department of Agriculture.

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

"Inspector." A State inspector of weights and measures.

"Intrastate commerce." Any and all commerce or trade that is begun, carried on and/or completed wholly within the limits of this Commonwealth.

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

"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.

"Local government unit." Any city, borough, township or town or any home rule municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

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

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

"Sell" or **"sale."** Barter and exchange.

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

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

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

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

"Weights and measures." All weights and measures of every kind, instruments and devices for weighing and measuring and any appliances and accessories associated with any or all such instruments and devices. The term shall include, but not be limited to, the following: parking meters, postal scales and other scales used to determine shipping charges, pill counters, coin-operated person weighers, coin-operated air dispensers and coin-operated axle and vehicle scales. The term shall also include Price Look Up (PLU) devices and Universal Product Code (UPC) scanning systems in food establishments required to be licensed in accordance with the act of July 7, 1994 (P.L.421, No.70), known as the Food Act. The term shall not be construed to include portable scales used to determine compliance with 75 Pa.C.S. Ch. 49 (relating to size, weight and load), meters for the measurement of electricity, gas, natural or manufactured, steam, coolant or water or the counting or timing of telephone calls when the same are operated in a public utility system or taxi meters. Such portable scales, electricity, gas, steam, coolant, water and telephone meters and taxi meters are hereby specifically excluded from the purview of this chapter, and none of the provisions of this chapter shall be construed to apply to such meters or to any appliances or accessories associated therewith.
(Oct. 24, 2012, P.L.1332, No.169, eff. imd.)

2012 Amendment. Act 169 added the defs. of "certified parking meter inspector" and "local government unit."

References in Text. The act of July 7, 1994 (P.L.421, No.70), known as the Food Act, referred to in this section, was repealed by the act of November 23, 2010 (P.L.1039, No.106). The subject matter is now contained in Subchapter B of Chapter 57 of this title.

Cross References. Section 4102 is referred to in section 4139 of this title.

SUBCHAPTER B
WEIGHTS AND MEASURES GENERALLY

Sec.

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§ 4105. Systems of weights and measures.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or both of these systems shall be used for all commercial purposes in this Commonwealth. The definitions of basic units of weight and measure, the tables of weight and measure and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions within this Commonwealth.

Cross References. Section 4105 is referred to in section 4139 of this title.

§ 4106. State standards of weight and measure.

Such weights and measures in conformity with the standards of the United States as have been supplied to the Commonwealth by the Federal Government or otherwise obtained by the Commonwealth for use as State standards shall, when the same have been certified as being satisfactory for use as such by the National Institute of Standards and Technology, be the State standards of weight and measure. The State standards shall be kept in a safe and suitable place in the State Metrology Laboratory, shall not be removed except for repairs or for certification and shall be submitted at least once in ten years to the National Institute of Standards and Technology for certification. The State standards shall be used only in verifying the office standards and for scientific purposes. The Department of General Services shall, within six months of the

effective date of this section, submit to the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate and the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives a plan to obtain full National Institute of Standards and Technology accreditation for the State Metrology Laboratory. Such plan shall include recommendations to solve the space, facility and equipment deficiencies of the laboratory.

Cross References. Section 4106 is referred to in section 4107 of this title.

§ 4107. Office and working standards and equipment.

In addition to the State standards provided for in section 4106 (relating to State standards of weight and measure), there shall be supplied by the Commonwealth at least one complete set of copies of the State standards to be kept in the office or laboratory of the bureau and to be known as "office standards" and also such "field standards" and such equipment as may be found necessary to carry out the provisions of this chapter. The office standards and field standards shall be verified upon their initial receipt and, at least once each year thereafter, the office standards by direct comparison with the State standards and the field standards by comparison with the office standards.

§ 4108. Director and inspectors of weights and measures.

There shall be a director of weights and measures and inspectors of weights and measures and necessary technical and clerical personnel who shall be appointed by the department and who shall collectively comprise the State Bureau of Ride and Measurement Standards, of which the director shall be the chief. The department shall be allowed such sums for salaries for the director, the inspectors and the necessary technical and clerical employees, for necessary equipment and supplies and for traveling and contingent expenses as shall be appropriated by the General Assembly.

§ 4109. General powers and duties of department.

The State Metrology Laboratory shall have the custody of the State standards of weight and measure and of the other standards and equipment provided for by this chapter and shall keep accurate records of the same. The department shall enforce the provisions of this subchapter and keep a general supervision over the weights and measures offered for sale, sold or in use in this Commonwealth.

§ 4110. Specific powers and duties of department; regulations.

(a) Regulations.--The department shall issue from time to time regulations for the enforcement and administration of this subchapter, which regulations, upon being promulgated pursuant to law, shall have the force and effect of law. These regulations may include:

(1) Standards of net weight, measure, count and standards of fill for any commodity in package form.

(2) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties.

(3) Exemptions from the sealing or marking requirements of section 4119 (relating to disposition of correct and incorrect apparatus) with respect to weights and measures of such character or size that such sealing or marking would

be inappropriate, impracticable or damaging to the apparatus in question.

(4) Institution of a program containing standards whereby individuals shall be department-certified as Certified Examiners of Weights and Measures. Certification under such program may be for a given category or categories of measuring or weighing devices or for a particular type of device except for commercially used truck-mounted fuel oil meters and retail motor fuel dispensers. The department shall certify only such individuals who:

(i) successfully complete the appropriate training course or courses prescribed by the National Institute of Standards and Technology for the type of certification sought and who comply with departmental certification standards promulgated under this paragraph; and

(ii) are not the owner or lessee of the devices tested and inspected or an employee or agent of the owner or lessee of the devices tested and inspected.

Any program instituted under this paragraph shall include testing and inspection performance standards, reporting procedures, random inspection and testing by inspectors of a sample of devices inspected and tested by Certified Examiners of Weights and Measures and any other type of standards or procedures the department deems necessary to implement the program.

(b) Specifics.--These regulations shall include specifications, tolerances and regulations for weights and measures of the character of those specified in section 4112 (relating to general testing and inspections) designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(1) that are not accurate;

(2) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(3) that facilitate the perpetration of fraud.

The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44, and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices of the Commonwealth except insofar as specifically modified, amended or rejected by a regulation issued by the department. For the purposes of this subchapter, apparatus shall be deemed to be correct when it conforms to all applicable requirements promulgated as specified in this section; other apparatus shall be deemed to be incorrect.

(c) Method.--Regulations shall be promulgated in the manner prescribed by law.

(d) Reports.--On or before March 1 of each year after the effective date of this subsection, the department shall submit a report to the Agriculture and Rural Affairs Committee of the Senate and the Agriculture and Rural Affairs Committee of the House of Representatives which shall describe all relevant activities of inspectors, Certified Examiners of Weights and Measures and city and county sealers of weights and measures for the preceding calendar year. The report shall contain, at a minimum, the following:

(1) An identification of the regions of this Commonwealth served by inspectors and city and county sealers of weights and measures and the number of such inspectors and city and county sealers of weights and measures in each region.

(2) The number of inspections made by each inspector, Certified Examiners of Weights and Measures and city and county sealers of weights and measures.

(3) The number and nature of enforcement actions initiated by each inspector and city and county sealers of weights and measures.

(4) The disposition of each enforcement action, including the number and nature of warnings issued by each inspector and city and county sealers of weights and measures.

(Oct. 24, 2012, P.L.1332, No.169, eff. imd.)

2012 Amendment. Act 169 amended subsecs. (a)(4) and (d).

Cross References. Section 4110 is referred to in sections 4102, 4112, 4119, 4142 of this title.

§ 4111. Testing and inspections of standards.

The State Metrology Laboratory at least once every five years shall test the standards of weight and measure procured by any city or county for which a sealer of weights and measures has been appointed, shall approve the same when found to be correct and shall inspect such standards at least once every two years.

Cross References. Section 4111 is referred to in section 4121 of this title.

§ 4112. General testing and inspections.

(a) Schedule.--When not otherwise provided by law, the department shall have the powers to inspect and test to ascertain if they are correct all weights and measures kept, offered or exposed for sale. It shall be the duty of the department within a 12-month period, or less frequently if in accordance with a schedule issued by it or more frequently if deemed necessary, to assure that all weights and measures commercially used:

(1) 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; or

(2) in computing the basic charge or payment for services rendered on the basis of weight, measure or count or of devices utilized to dispense services on time;

are inspected and tested to ascertain if they are correct. With respect to single-service devices, that is, devices designed to be used commercially only once and to be then discarded, and with respect to devices uniformly mass produced, as by means of a mold or die and not susceptible to individual adjustment, tests may be made on representative samples of such devices and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

(b) Inspections.--Notwithstanding subsection (a), it shall be the duty of the department at intervals not greater than 18 months, to assure that all commercially used vehicle scales, truck-mounted fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers are inspected and tested to ascertain if they are correct. The department may accept reports of Certified Examiners of Weights and Measures as sufficient to meet the inspection and testing regulations promulgated under section

4110(a)(4) (relating to specific powers and duties of department; regulations), provided such inspection and testing is performed in accordance with all applicable standards and procedures adopted under section 4110(a)(4), provided that inspectors shall conduct inspection and testing of a sample of devices inspected and tested by Certified Examiners of Weights and Measures.

(b.1) Time.--Unless the department is responding to a consumer complaint, the department shall conduct inspections of truck-mounted fuel oil meters at a mutually agreed upon time. The mutually agreed upon time shall not unreasonably interfere with the delivery of fuel oil during winter months. Both parties shall make a good faith effort to schedule the inspections.

(b.2) Inspection of parking meters.--Notwithstanding subsections (a) and (b), if a local government unit, authority organized by a local government unit or person makes use of parking meters, it shall be the duty of the local government unit, the appropriate authority or the person at intervals not greater than 60 months to assure that all such parking meters are inspected and tested to ascertain if they are correct. The local government unit, appropriate authority or person may accept reports of certified parking meter inspectors as sufficient to meet the inspection and testing requirements of this subsection. The department shall make investigations of parking meters under section 4116 (relating to investigations).

(c) General testing and inspection of scanning devices.--Notwithstanding any other provision of this chapter to the contrary, the department shall test and inspect all commercially used Universal Product Code scanning systems and Price Look Up devices at intervals not greater than 36 months to ascertain if they are correct. A city or county may test and inspect such devices and systems if specified in its memorandum of understanding entered into with the department in accordance with section 4125 (relating to division of responsibilities). Such devices and systems shall be exempt from the triennial testing and inspection requirements of this subsection if the device or system is inspected at least annually on an unannounced basis as part of a private certification program which conforms with the examination procedures for price verification as adopted by the National Conference of Weights and Measures.

(d) Interim procedures.--In order to facilitate the speedy implementation of subsection (c), the department shall promulgate, adopt and use guidelines to provide for the certification of individuals to test and inspect all commercially used Universal Product Code scanning systems and Price Look Up devices. The guidelines shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall be effective for a period of not more than two years. After the expiration of the two-year period, the guidelines shall expire and shall be replaced by regulations which shall be promulgated, adopted and published as provided by law. Nothing in this chapter shall be construed to relieve the department of the responsibility, prior to June 30, 1999, to conduct tests and inspections of all commercially used Universal Product Code scanning systems and Price Look Up

devices on a periodic basis and in response to complaints and to initiate appropriate enforcement actions.
(Mar. 24, 1998, P.L.217, No.39, eff. imd.; Oct. 24, 2012, P.L.1332, No.169, eff. imd.)

2012 Amendment. Act 169 amended subsecs. (b) and (c) and added subsecs. (b.1) and (b.2).

1998 Amendment. Act 39 amended subsec. (c) and added subsec. (d).

Cross References. Section 4112 is referred to in sections 4110, 4114, 4120, 4121, 4122, 4142 of this title.

§ 4113. Registration of sellers, installers and repairers of weighing and measuring devices.

The department shall have the authority to establish, by regulation, a program requiring the registration of persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices. The program may prescribe minimum field standards to be maintained by those persons to adequately test and place weighing and measuring devices into commercial service. The program may also require that those persons give adequate notice to the responsible weights and measures jurisdiction of the installation of a commercial weighing and measuring device.

§ 4114. Registration and report of inspection and testing of weighing and measuring devices used for commercial purposes.

The department shall establish, by regulation, a program requiring the registration and reporting of inspection and testing of weighing and measuring devices which are required to be tested and inspected on an annual basis in accordance with section 4112 (relating to general testing and inspections). A food establishment shall register its weighing and measuring devices at the same time it submits its annual registration under the act of July 7, 1994 (P.L.421, No.70), known as the Food Act. A public eating and drinking place shall register its weighing and measuring devices at the same time it submits its annual license fee under the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law. A commercial feed facility shall register its weighing and measuring devices at the same time it submits its annual license fee under section 5103 (relating to licensing). The department shall exempt from the registration requirement of this section any establishment engaged in the retail sale of gasoline for use in the fuel supply tanks of motor vehicles which is required to obtain an annual liquid fuels permit from the Department of Revenue in accordance with the act of May 21, 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act. The department shall enter into a memorandum of understanding with the Department of Revenue which shall specify procedures for the collection of data relating to establishments engaged in the retail sale of gasoline. Nothing in this section shall be construed to authorize the department to impose a fee for the registration of any weighing and measuring device.

References in Text. The act of May 21, 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act, referred to in this section, was repealed by the act of April 17, 1997 (P.L.6, No.3). The subject matter is now contained in Chapter 90 of Title 75 (Vehicles).

The act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, referred to in this section, was repealed by the act of November 23, 2010 (P.L.1039,

No.106). The subject matter is now contained in Subchapter A of Chapter 57 of this title.

The act of July 7, 1994 (P.L.421, No.70), known as the Food Act, referred to in this section, was repealed by the act of November 23, 2010 (P.L.1039, No.106). The subject matter is now contained in Subchapter B of Chapter 57 of this title.

§ 4115. Training program.

(a) Inspectors and county and city sealers.--The department shall establish by regulation minimum training which shall be required to be met by all inspectors and county and city sealers. The department shall adopt the training program prescribed by the National Institute of Standards and Technology for inspectors and sealers of weights and measures.

(b) Certified parking meter inspectors.--The department shall promulgate regulations that establish training and certification requirements and procedures for certified parking meter inspectors. Prior to the promulgation of regulations under this subsection, the department may issue a temporary order establishing training and certification requirements and procedures for certified parking meter inspectors. A temporary order shall not be effective until on or after it is published in the Pennsylvania Bulletin and shall remain in effect for no more than one year, unless reissued or supplanted sooner by regulations.

(Oct. 24, 2012, P.L.1332, No.169, eff. imd.)

Cross References. Section 4115 is referred to in section 4121 of this title.

§ 4116. Investigations.

The department shall investigate complaints made to it concerning violations of the provisions of this subchapter and shall, upon its own initiative, conduct such investigations as it deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this subchapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

Cross References. Section 4116 is referred to in sections 4112, 4120, 4121, 4122, 4187.6 of this title.

§ 4117. Inspection of packages.

The department shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether the same contain the amounts represented and whether they are kept, offered or exposed for sale or sold in accordance with law, and, when such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department shall use the National Institute of Standards and Technology Handbook 133, latest edition, containing any amendments or supplements thereto, or which may be superseded by a new handbook, except insofar as specifically modified, amended or rejected by a regulation issued by the department. No person shall:

(1) sell or keep, offer or expose for sale in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this

section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements; or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements in any manner except with the specific approval of the department.

Cross References. Section 4117 is referred to in sections 4121, 4122 of this title.

§ 4118. Stop-use, stop-removal and removal orders.

(a) Orders.--The department shall have the power to issue stop-use orders, stop-removal orders and removal orders with respect to weights and measures being commercially used and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered or exposed for sale, sold or in the process of delivery, whenever, in the course of the department's enforcement of the provisions of this subchapter, the department deems it necessary or expedient to issue such orders.

(b) Prohibitions.--No person shall use, remove from the premises specified or fail to remove from the premises specified any weight, measure or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order or removal order issued under the authority of this section.

(c) Appeal.--Whenever an aggrieved person shall appeal or seek to enjoin enforcement of any order issued by the department pursuant to this section, such proceeding shall be brought in the court of common pleas of the judicial district in which the weight, measure or commodity was located at the time of the issuance of the department's order.

Cross References. Section 4118 is referred to in sections 4121, 4122 of this title.

§ 4119. Disposition of correct and incorrect apparatus.

(a) Approval and disapproval.--The department shall approve for use and seal or mark with appropriate devices such weights and measures as it finds upon inspection and test to be correct as defined in section 4110 (relating to specific powers and duties of department; regulations) and shall reject and mark or tag "rejected" such weights and measures as it finds upon inspection or test to be incorrect as defined in section 4110. The sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by regulation of the department issued under the authority of section 4110.

(b) Seizure and disposition.--Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by section 4126 (relating to duty of owners of incorrect apparatus) or if used or disposed of contrary to the requirements of section 4126.

Cross References. Section 4119 is referred to in sections 4110, 4121, 4122, 4142 of this title.

§ 4120. Police powers; right of entry and stoppage.

(a) Seizure without warrant.--With respect to the enforcement of this chapter and any other acts dealing with weights and measures, the department may seize for use as evidence without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity found, prior

to seizure, to be used, retained, offered or exposed for sale or sold in violation of law.

(b) Compliance.--In exercising its powers under section 4112 (relating to general testing and inspections) or 4116 (relating to investigations), the department is authorized to enter and go into or upon, without formal warrant, any structure, vehicle or premises and to stop any person whosoever and to require him to proceed with or without any vehicle of which he may be in charge to the nearest available testing apparatus tested and approved by the department, a city or a county.

(c) Method.--The department shall utilize the method of sale of commodities as stated in the National Institute of Standards and Technology Handbook 130, except insofar as specifically modified, amended or rejected by a regulation issued by the department.

Cross References. Section 4120 is referred to in sections 4121, 4122, 4187.6 of this title.

§ 4121. Powers and duties of director and inspector.

(a) Powers and duties.--The powers and duties given to and imposed upon the department by sections 4111 (relating to testing and inspections of standards), 4112 (relating to general testing and inspections), 4115 (relating to training program), 4116 (relating to investigations), 4117 (relating to inspection of packages), 4118 (relating to stop-use, stop-removal and removal orders), 4119 (relating to disposition of correct and incorrect apparatus), 4120 (relating to police powers; right of entry and stoppage), 4124 (relating to concurrent jurisdiction) and 4192 (relating to temporary or permanent injunctions) are hereby given to and imposed upon the director and inspector also when acting under the instructions and at the direction of the department.

(b) Delegation of powers and duties.--The department may delegate to city and county sealers appointed pursuant to the provisions of section 4122 (relating to city and county sealers and deputy sealers of weights and measures; appointment, powers and duties) the powers and duties, or any portion thereof, given to and imposed upon it by sections 4112, 4116, 4117, 4118, 4119, 4120 and 4192, provided that the division of inspection responsibilities and other conditions of such delegation are fully delineated as part of the memorandum of understanding required pursuant to section 4125 (relating to division of responsibilities).

Cross References. Section 4121 is referred to in sections 4122, 4123, 4124, 4125 of this title.

§ 4122. City and county sealers and deputy sealers of weights and measures; appointment, powers and duties.

(a) Appointment.--The mayors of cities of the second and third class, and the several boards of county commissioners, may, respectively, appoint one or more persons to serve as sealers of weights and measures in the respective county or city. In cities of the first class, the sealers shall be appointed by the county commissioners of the county in which the said city may be located. Nothing in this section shall be construed to prevent two or more counties, or any county and city, from combining the whole or any part of their jurisdictions, as may be agreed upon by the board of county commissioners and mayors of cities, with one set of standards and one sealer upon the written consent of the department. Any sealer appointed pursuant to an agreement for such combination

shall, subject to the terms of his appointment, have the same authority and duties as if he had been appointed by each of the authorities who are parties to the agreement.

(b) Powers and duties.--The sealer of a city or of a county and his deputy sealers, when acting under his instructions and at his direction, shall, but only to the extent delegated by the department pursuant to section 4121 (relating to powers and duties of director and inspector) and memorialized in a memorandum of understanding executed pursuant to section 4125 (relating to division of responsibilities), have the same powers and shall perform the same duties within the city or the county for which appointed as are granted to and imposed upon the director by sections 4112 (relating to general testing and inspections), 4116 (relating to investigations), 4117 (relating to inspection of packages), 4118 (relating to stop-use, stop-removal and removal orders), 4119 (relating to disposition of correct and incorrect apparatus), 4120 (relating to police powers; right of entry and stoppage) and 4192 (relating to temporary or permanent injunctions).

Cross References. Section 4122 is referred to in section 4121 of this title.

§ 4123. City and county standards and equipment.

(a) Procurement of standards.--The mayor of each city and the board of county commissioners of each county to which a delegation of powers and duties has been effected pursuant to section 4121 (relating to powers and duties of director and inspector) shall:

(1) Procure at the expense of the city or county, as the case may be, such standards of weight and measure and such additional equipment to be used for the enforcement of the provisions of this subchapter in such city or county as may be prescribed by the department.

(2) Provide a suitable office for the sealer.

(3) Make provisions for the necessary clerical services, supplies and transportation and for defraying contingent expenses incident to the official activities of the sealer in carrying out the provisions of this subchapter.

(b) Official.--When the standards of weight and measure required by this section to be provided by a city or county shall have been examined and approved by the department, they shall be the official standards for the city or county.

(c) Comparisons.--It shall be the duty of the sealer to make or to arrange to have made, at least as frequently as once a year, comparisons between his field standards and appropriate standards of a higher order belonging to his city or county, as the case may be, or to the Commonwealth in order to maintain the field standards in accurate condition.

Cross References. Section 4123 is referred to in section 4178 of this title.

§ 4124. Concurrent jurisdiction.

In cities and counties to which a delegation of powers and duties has been effected pursuant to section 4121 (relating to powers and duties of director and inspector), the department shall have concurrent authority to enforce the provisions of this chapter.

Cross References. Section 4124 is referred to in section 4121 of this title.

§ 4125. Division of responsibilities.

(a) Agreements; local inspection.--The department shall enter into memorandums of understanding with counties and with cities to which a delegation of powers and duties has been effected pursuant to section 4121 (relating to powers and duties of director and inspector) for a division of inspection responsibilities for the enforcement of this chapter and any rules, regulations and standards promulgated under this chapter, provided that such counties or cities satisfy the standards and requirements established by the department to assure uniform Statewide enforcement of this chapter. Each memorandum of understanding shall be reviewed and updated annually and may be revoked in whole or in part by the department in the event the department determines that the city or county sealer enforcement program does not satisfy the standards and requirements established by the department as necessary to assure uniform Statewide enforcement of this chapter. In reaching agreements to enter into memorandums of understanding with counties and cities employing sealers of weights and measures, the provisions of this chapter and its regulations shall be considered as establishing uniform requirements, regulations and standards for weights and measures and weighing and measuring devices throughout this Commonwealth.

(b) Reports.--Each city and county sealer shall annually and at such other times as the department may require submit to the department a written report of the work performed by him, of the weights, measures and weighing and measuring devices inspected or tested by him and the results of such inspection or test, of all prosecutions instituted by him for violations of the provisions of this chapter and of all other matters and things pertaining to his duties or which may be required by the department.

Cross References. Section 4125 is referred to in sections 4112, 4121, 4122 of this title.

§ 4126. Duty of owners of incorrect apparatus.

(a) Rejected apparatus.--Weights and measures that have been rejected under the authority of the department or of a sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section.

(b) Corrections.--The owners of rejected weights and measures shall cause the same to be made correct within 30 days or such longer period as may be authorized by the rejecting authority or, in lieu of this, may dispose of the same but only in such manner as is specifically authorized by the rejecting authority.

(c) Reexamination.--Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined and found to be correct or until specific written permission for use is issued by the rejecting authority.

Cross References. Section 4126 is referred to in section 4119 of this title.

§ 4127. Method of sale of commodities.

(a) Liquid commodities.--General commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this subchapter, commodities not in liquid form shall be sold only by weight, measure of length or area or by count. Liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count only if

such methods give accurate information as to the quantity of commodity sold.

(b) Applicability.--The provisions of this section shall not apply to:

(1) commodities when sold for immediate consumption on the premises where sold;

(2) vegetables when sold by the head or bunch;

(3) commodities in containers standardized by Federal or State law;

(4) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(5) concrete aggregates, concrete mixtures and loose solid materials such as earth, soil, gravel, crushed stone and the like when sold by cubic measure; or

(6) unprocessed vegetable and animal fertilizer when sold by cubic measure.

(c) Regulations.--The department may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest. In issuing these regulations, the department shall recognize the method of sale of commodities as stated in the National Institute of Standards and Technology Handbook 130, except as otherwise modified, amended or rejected by regulation.

§ 4128. Packages; declarations of quantity and origin; variations; exemptions.

(a) Declarations.--Except as otherwise provided in this subchapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce kept for the purpose of sale or offered or exposed for sale in intrastate commerce shall bear on the outside of the package such definite, plain and conspicuous declarations of:

(1) The identity of the commodity in the package unless the same can easily be identified through the wrapper or container.

(2) The net quantity of the contents in terms of weight, measure or count.

(3) In the case of any package kept, offered or exposed for sale or sold any place other than on the premises where packed, the name and place of business address of the manufacturer, packer or distributor as may be prescribed by regulation issued by the department, provided that, in connection with the declaration required under paragraph (2), neither the qualifying term "when packed" or any words of similar import nor any term qualifying a unit of weight, measure or count (for example, "jumbo," "giant," "full" and the like) that tends to exaggerate the amount of commodity in a package shall be used.

(b) Reasonable variations.--Under subsection (a)(2), the department shall, by regulation, establish:

(1) Reasonable variations to be allowed which may include variations below the declared weight or measure caused by ordinary and customary exposure only after the commodity is introduced into intrastate commerce to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure.

(2) Exemptions as to small packages.

(3) Exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not

sold as individual units or customarily weighed or measured at time of sale to the consumer.

(c) Other commodities.--All commodities not considered as commodities in package form within the meaning of this chapter or labeled as to net contents at the time of sale shall be counted, measured or weighed in full view of the purchaser at the time of sale on a weighing or measuring device approved by the department and inspected as to accuracy by several State, county and city inspectors of weights and measures, and a statement of result of such count, measure or weight shall be made to the purchaser by the person making the sale. All commodities not considered as commodities in package form within the meaning of this chapter or labeled as to net contents at the time of sale, and which shall be ordered by telephone or in some manner wherein the purchaser is not present at the time the commodities are weighed, measured or counted, shall have marked plainly thereon by the seller or his agent the contents either by weight, measure or count, or a written memorandum of the same shall be delivered with the commodity to purchaser.

Cross References. Section 4128 is referred to in section 4129 of this title.

§ 4129. Declarations of unit price on random packages.

In addition to the declarations required by section 4128 (relating to packages; declarations of quantity and origin; variations; exemptions), any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure or count.

§ 4130. Misleading packages.

(a) Packaging.--No commodity in package form shall be so wrapped nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package.

(b) Contents.--The contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the department.

§ 4131. Advertising packages for sale.

(a) Quantity of contents.--Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package.

(b) Exaggerations prohibited.--In connection with the declaration required under this section, there shall be declared neither the qualifying term "when packed" nor any other words of similar import nor any term qualifying a unit of weight, measure or count (for example, "jumbo," "giant," "full" and the like) that tends to exaggerate the amount of commodity in the package.

(c) Dual declaration.--Where the law or regulation requires a dual declaration of net quantity to appear on the package, only the smaller of the two units of weight or measure need appear in the advertisement.

§ 4132. Sale by net weight.

The word "weight" as used in this subchapter in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity

shall be employed, and all contracts concerning commodities shall be so construed.

§ 4133. Misrepresentation of price.

(a) Pricing.--Whenever any commodity or service is sold or is offered, exposed or advertised for sale by weight, measure or count, the price shall not be misrepresented nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser.

(b) Unit of weight.--Whenever an advertised, posted or labeled price per unit of weight, measure or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed, and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as and at least one-half the height and width of the numerals representing the whole cents.

§ 4134. Meat, poultry and seafood.

Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts) and all seafood, except shellfish offered or exposed for sale or sold as food, shall be offered or exposed for sale and sold by weight. The following may be sold by weight, measure or count:

(1) Items sold for consumption on the premises.

(2) Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold.

(3) Ready-to-eat chickens and chicken parts cooked on the premises but not packaged in advance of sale.

(4) Sandwiches when offered or exposed for sale on the premises where packed or produced and not intended for resale.

§ 4135. Butter, oleomargarine and margarine.

Butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight and only in units of one-quarter pound, one-half pound or one pound. Butter may be sold in multiples of one pound. Tub butter packaged on the premises where sold and in advance of sale may be sold in random weights.

§ 4136. Fluid dairy products.

(a) Quantities.--All fluid dairy products, including, but not limited to, whole milk, skimmed milk, cultured milk, sweet cream, sour cream and buttermilk, shall be packaged for retail sale only in units of one gill, one-half liquid pint, ten fluid ounces, 12 fluid ounces, one liquid pint, one-third liquid quart, one liquid quart or multiples of one liquid quart, one-half gallon, one gallon or multiples of one gallon.

(b) Small packages.--Packages in units of less than one gill shall be permitted.

(c) Metric.--Metric equivalent packages of fluid dairy products shall only be units of 125 milliliters, 250 milliliters, 500 milliliters, 1 liter or multiples of 1 liter.

§ 4137. Flour, cornmeal and hominy grits.

(a) Increments of weight.--When in package form and when packed, kept, offered or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, cornmeal and hominy grits shall be packaged only in units of 3, 5, 10, 25, 50 or 100 pounds of avoirdupois weight.

(b) Small packages.--Packages in units of less than three pounds or more than 100 pounds shall be permitted.

§ 4138. Potatoes.

(a) Increments of weight.--All potatoes packed for sale, offered or exposed for sale in this Commonwealth shall be packaged in containers of net weights of any increment.

(b) Exceptions.--The provisions of this section shall not apply to:

(1) potatoes offered to the consumer at retail from bulk stock;

(2) the sale of potatoes to processors or for export;

(3) the sale of peeled, cut or sliced potatoes, or frozen or dehydrated potatoes, or precooked dehydrated or dried potatoes;

(4) the sale of seed potatoes; or

(5) the sale of sweet potatoes or yams.

(Dec. 18, 2013, P.L.1241, No.124, eff. 60 days)

2013 Amendment. Act 124 amended subsec. (a).

§ 4139. Construction of contracts.

Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in sections 4102 (relating to definitions) and 4105 (relating to systems of weights and measures), and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

§ 4140. Hindering or obstructing officer; penalties.

Any person who shall hinder or obstruct in any way the department, the director or any one of the inspectors or a sealer or deputy sealer in the performance of his official duties shall, upon conviction, be subject to criminal penalties in accordance with section 4191(a) (relating to offenses and penalties).

§ 4141. Impersonation of officer; penalties.

Any person who shall impersonate in any way the department, the director or any one of the inspectors or a sealer or deputy sealer by the use of his seal or a counterfeit of his seal or in any other manner commits a misdemeanor and, upon conviction, shall be subject to criminal penalties in accordance with section 4191(a) (relating to offenses and penalties).

§ 4142. Prohibited acts.

(a) General rule.--It shall be unlawful:

(1) To use or have in possession for the purpose of using for any commercial purpose specified in section 4112 (relating to general testing and inspections), sell, offer or expose for sale or hire or have in possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(2) To use or have in possession for the purpose of current use for any commercial purpose specified in section 4112 a weight or measure that does not bear a seal or mark such as specified in section 4119 (relating to disposition of correct and incorrect apparatus) unless such weight or measure has been exempted from testing by provisions of section 4112 or by regulation of the department issued under the authority of section 4110 (relating to specific powers and duties of department; regulations).

(3) To dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) To remove from any weight or measure contrary to law or regulation any tag, seal or mark placed thereon by the appropriate authority.

(5) To sell, offer or expose for sale less than the represented quantity of any commodity, thing or service, provided, however, that, if a commodity is prepackaged by someone other than the possessor, the possessor shall not be deemed to have made a representation within the purview of this subsection if the representation appears on the label of the prepackaged commodity.

(6) To take more than the quantity he represents of any commodity, thing or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

(7) To keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity except commodities prepackaged by someone other than the possessor, or service in a condition or manner contrary to law or regulation.

(8) To use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by a customer.

(9) To violate any provision of this subchapter or of the regulations promulgated under the provisions of this subchapter for which a specific penalty has not been prescribed.

(b) Offenses by inspectors and sealers of weights and measures.--It shall be unlawful for any inspector or sealer:

(1) To use any tests or standards, or to attempt to use the same, in ascertaining the correctness or accuracy of weights and measures until such comparisons are made and their accuracy established and a certificate of conformance issued therefor as provided by this chapter.

(2) To manufacture, sell or offer to sell any weighing or measuring device used in the sale of commodities.

(3) To repair, adjust or offer to repair or adjust any weighing or measuring device.

Cross References. Section 4142 is referred to in section 4191 of this title.

§ 4143. Presumptive evidence.

For the purposes of this subchapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand or vehicle in which or from which it is shown that buying or selling is commonly carried on shall be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle.

SUBCHAPTER C
PUBLIC WEIGHMASTERS

Sec.

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§ 4150. Enforcement and regulations.

(a) General rule.--The director is authorized and directed to enforce the provisions of this subchapter and to adopt, with the approval of the department, such rules and regulations as are deemed necessary to carry out the provisions of this subchapter.

(b) Nonapplication.--The provisions of this chapter shall not be applicable to the weighing of vehicles when conducting an investigation for compliance with the provisions of 75 Pa.C.S. Ch. 49 (relating to size, weight and load). The provisions of this chapter shall not apply to a qualified Commonwealth employee, as defined in 75 Pa.C.S. § 4102 (relating to definitions), engaged in the inspection, weighing or measuring of vehicles as required by 75 Pa.C.S. § 4704 (relating to inspection by police or Commonwealth personnel), 4981 (relating to weighing and measurement of vehicles) or 8302 (relating to powers and duties of department).

§ 4151. Licenses.

(a) Requirement.--Except as otherwise provided in this subchapter, no person shall make or issue a weighmaster's certificate unless licensed by the department. Application for a license shall be made upon a form prescribed by the department. The application shall contain the following:

(1) The name and address of the business or businesses for which the public weighmaster will be conducting weighing.

(2) The name and address of the residence of the applicant.

(3) The scale locations where weighing will be conducted by the weighmaster.

(b) Referral.--The department may refer any application for a license as a weighmaster to any city or county inspector of weights and measures for a report as to the accuracy of the statements made on the application, the suitability of the scale or scales to be used by the applicant and such other information as the department may require.

(c) Fee.--The applicant shall pay to the department a license fee of $60, which shall be remitted to the State Treasurer through the Department of Revenue. The license shall be for a period of two years from the date of issue. A license may be renewed at the discretion of the department for successive periods of not more than two years upon payment to the department of a license fee of $60, which shall be remitted to the State Treasurer through the Department of Revenue.

(d) Display.--Each license or a duplicate thereof shall be kept conspicuously displayed at the place where the weighmaster is engaged in weighing. In the event of the change of any name

or address appearing on any application, the licensed weighmaster shall notify the department of the change within 48 hours.

(e) Suspension or revocation.--After a hearing and upon due notice to the licensee, a license may be suspended or revoked by the department for dishonesty, incompetency, inaccuracy or failure to notify the department of any change of name or address stated in the application, and a license may be revoked by the department without hearing if the licensed weighmaster has been found guilty of any violation of the provisions of this subchapter or if the licensed weighmaster has ceased to be employed at the places of weighing for which the license has been issued.

(f) Records.--The department shall keep a record of all applications received and of all licenses issued.

(g) Rules.--The department may adopt rules for determining the qualifications of an applicant for a license as a licensed public weighmaster.

§ 4152. Weighmasters' certificates.

The original weighmaster's certificate shall be typewritten or made out in ink or indelible pencil, and the original and each copy of the certificate shall show all of the following:

(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 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. All the information under the paragraph must be determined by the same weighmaster in accordance with the rules and regulations of the department.

(8) A sequential serial number.

§ 4153. Preparation of weighmaster's certificate.

A licensed public weighmaster shall not enter on a weighmaster's certificate issued by the weighmaster any weight values which the weighmaster has not personally determined, and the weighmaster shall make no entries on a weighmaster's certificate issued by another person. A weighmaster's certificate shall be so prepared as to show clearly what weight or weights were actually determined. If the certificate form provides for the entry of gross, tare and net weights in any case in which only the gross, the tare or the net weight is determined by the weighmaster, he shall strike through or otherwise cancel the printed entries for the weights not determined or computed. If gross and tare weights are shown on a weighmaster's certificate and both of these were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each weight and the date of each determination.

§ 4154. Use of approved weighing device required.

When making a weight determination as provided for by this subchapter, a licensed public weighmaster shall use a weighing device approved by the bureau in accordance with Subchapter D (relating to device type approval) which is of a type suitable for the weighing of the amount and kind of material to be

weighed and which has been tested and approved for use by a weights and measures officer of this Commonwealth preceding the date of the weighing.

§ 4155. Scale requirement.

A licensed public weighmaster shall not use a scale to weigh a load which exceeds the normal or rated capacity of the scale, nor shall the public weighmaster engage in multiple-draft weighing where the vehicle exceeds the length of the scale.

§ 4156. Disposition of copies of certificates.

The original copy of a weighmaster's certificate shall be delivered to the purchaser of the commodity specified in the certificate at the time of delivery. One copy of the certificate shall be retained at the place of weighing, and one copy may be retained by the business selling or delivering the commodity. Copies of weighmasters' certificates in possession of licensed weighmasters shall be retained for a period of two years and, during business hours, shall be subject to inspection or subpoena for use as evidence by any State, county or city inspector of weights and measures.

§ 4157. License required; definition.

(a) License required.--No person shall 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 this subchapter, hold himself or herself out as a licensed public weighmaster, issue any weighmaster's certificate, ticket memorandum or statement or engage in the full-time or part-time business of public weighing unless he holds a valid license as a licensed public weighmaster.

(b) Definition.--As used in this section, the term "public weighing" means the weighing of any commodity for any commercial purpose.

§ 4158. Suspension or revocation of licenses.

(a) Authorization.--The department is authorized to suspend or revoke the license of any licensed public weighmaster:

(1) when it is satisfied, after a hearing, upon ten days' notice to the licensee, that the licensee has violated any provision of this subchapter or of any valid regulation of the department affecting licensed public weighmasters; or

(2) when a licensed public weighmaster has been convicted in any court of competent jurisdiction of violating any provision of this subchapter or any regulation issued under authority of this subchapter.

(b) Petition for hearing de novo.--Any licensee whose license is suspended or revoked may, within 30 days after notice of the suspension or revocation, file a petition in the Commonwealth Court for a hearing de novo to determine whether the action of the department is lawful and reasonable. The court shall hear the petition and may make any appropriate order or decree.

§ 4159. Prohibited acts.

(a) General rule.--It shall be unlawful:

(1) For a weighmaster to issue a false or incorrect weighmaster's certificate.

(2) For a person to solicit a weighmaster to issue a false or incorrect weighmaster's certificate.

(3) For a person to use or issue a weighmaster's certificate except one prepared on a form issued or approved by the department.

(4) For a person to print or distribute any forms of weighmaster's certificates unless authorized to do so by the department.

(5) For a person to use a false or incorrect weighmaster's certificate or a weighmaster's certificate not bearing the signature and license number of a licensed weighmaster and the license number of the vehicle and trailer or other means of permanent identification.

(6) For a weighmaster knowingly to permit a weighmaster's certificate to be issued or used which purports to bear the weighmaster's signature and which was not in fact signed by the weighmaster at a time of weighing or which expresses a gross, tare or net weight not ascertained by the weighmaster.

(7) For a person to deliver solid fuel without an official weighmaster's certificate.

(8) For a person to furnish a false name or address of a purchaser to the licensed weighmaster at the time of weighing.

(9) For a person to permit any diminution of a load before its delivery to the purchaser or purchasers of the load.

(10) Except as otherwise provided in this subchapter, for a person to fail, neglect or refuse to deliver a correct and lawful weighmaster's certificate to the purchaser of a commodity whose name and address appears on the weighmaster's certificate.

(11) For a person to otherwise directly or indirectly violate a provision of this subchapter.

(b) Prima facie evidence of short weight.--Whenever any commodity is sold and delivered to the purchaser named in the approved weighmaster's certificate and the seller or the seller's representative neglects, fails or refuses to deliver an approved weighmaster's certificate at the time of delivery or the net weight of the commodity is determined to be less than the net amount stated on the approved weighmaster's certificate or as otherwise represented to the purchaser, prima facie evidence of short weight shall exist, and the seller may be prosecuted under this section for short weight.

(c) Prima facie evidence of diminution of load.--Whenever the gross weight of a vehicle and load and the tare weight and net weight of a commodity have been determined in accordance with the provisions of this subchapter and the net weight of the commodity is determined to be less than that stated in a weighmaster's certificate, proof of the determination shall constitute prima facie evidence of the diminution of the load of the commodity before delivery to the purchaser.

§ 4160. Sales by weight.

Any commodity shall be duly weighed by a licensed weighmaster of this Commonwealth on accurate scales which are suitable for weighing the tare and gross weight of the vehicle or vehicle and trailer transporting the commodity and which are located in this Commonwealth and have been tested and approved by an official empowered by law to test the scales. Weighing shall be done by a licensed weighmaster at the time of sale or delivery.

§ 4161. Separation required.

When more than one type of solid fuel or other commodity is sold or delivered to a consumer, the vehicle making the delivery shall have a partition separating each type of solid fuel or other commodity, and each type shall be accompanied by a weighmaster's certificate, except as otherwise provided for in this subchapter.

§ 4162. Substitution of another purchaser in weighmaster's certificate.

If a person is, for practical reasons, unable to deliver a commodity to the purchaser originally designated in the weighmaster's certificate, the person may substitute the name and address of another purchaser, provided that a report of the substitution is made to the licensed weighmaster within 24 hours.

§ 4163. Authorization to inspect and direct to nearest scales.

Any State, county or city inspector of weights and measures who finds any commodity ready for or in process of delivery may inspect the commodity as to its weight and may direct the person in charge of the delivery of the commodity to convey the commodity to the nearest available scales operated by a weighmaster designated by the inspector. The inspector shall determine the gross weight of the commodity and the vehicle on which it is carried and shall direct the person in charge to return to the scales immediately upon unloading the commodity. Upon return of the vehicle, the inspector shall determine the weight of the vehicle without load and determine the net weight of the load delivered. The person in charge of a vehicle containing such a commodity or from which the commodity has been unloaded shall not fail to take the vehicle, upon the direction of the inspector of weights and measures, to the scales required in this section and shall not refuse to permit the commodity or vehicle to be weighed.

§ 4164. Weighmaster's certificate required.

(a) General rule.--No person shall sell, transport over a public highway, deliver or cause to be delivered or start out to deliver any solid fuel in a lot or lots in amounts exceeding 100 pounds without each lot in each separate compartment of the vehicle or vehicle and trailer being accompanied by a weighmaster's certificate issued by a licensed weighmaster of this Commonwealth. This subsection does not apply when weighing takes place at the point of delivery or sale.

(b) Exception.--This section shall not apply to a producer of solid fuel who 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 a purpose other than for sale.

Cross References. Section 4164 is referred to in sections 4165, 4166 of this title.

§ 4165. Small lots.

When solid fuel is sold in lots not exceeding 100 pounds, the provisions of section 4164(a) (relating to weighmaster's certificate required) shall not apply if the solid fuel is delivered in closed containers or closed bags and the net contents of the bag or container, expressed in avoirdupois pounds, the type of solid fuel and the name, address, city, state and zip code of the seller are plainly stamped or printed on the containers or bags or upon a tag securely attached to the containers or bags.

§ 4166. Exception for boatloads or railroad carloads.

Section 4164(a) (relating to weighmaster's certificate required) shall not apply to 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.

§ 4167. Rules and regulations.

The department shall have the power to adopt and promulgate rules and regulations necessary to carry out the provisions of this subchapter. All previous rules and regulations shall remain

in full force and effect until new or amended rules and regulations are adopted by the department.

§ 4168. Sales by employer-producer to employees.

In any case where under the provisions of a contract it is provided that solid fuel be sold at cost by an employer-producer to his employees for their own use and consumption, the solid fuel may be sold by cubic contents instead of weight, but no solid fuel so sold shall be transported over the highways of this Commonwealth from the place of production to the residence of the employee unless the operator of the vehicle possesses a certificate of origin. The certificates of origin shall contain such information as may be prescribed by the department and shall be signed by the producer or the producer's agent, and a copy of each certificate shall be kept at the place of production for at least two years.

§ 4169. Existing licenses.

A person who holds a valid license issued under the act of July 19, 1935 (P.L.1356, No.427), referred to as the Solid Fuel Weight Regulation Law, or the act of April 28, 1961 (P.L.135, No.64), known as the Public Weighmaster's Act, immediately prior to the effective date of this subchapter shall, on the effective date of this subchapter, be deemed licensed by the department under this subchapter, and existing licenses shall continue to be valid until their respective expiration dates, unless sooner suspended or revoked.

References in Text. The act of July 19, 1935 (P.L.1356, No.427), referred to as the Solid Fuel Weight Regulation Law, referred to in this section, was repealed by the act of December 18, 1996 (P.L.1028, No.155). The subject matter is now contained in Chapter 41 (Weights and Measures).

The act of April 28, 1961 (P.L.135, No.64), known as the Public Weighmaster's Act, referred to in this section, was repealed by the act of December 18, 1996 (P.L.1028, No.155). The subject matter is now contained in Chapter 41 (Weights and Measures).

SUBCHAPTER D
DEVICE TYPE APPROVAL

Sec.

4170. Approval of types of weights and measures and weighing and measuring devices.
4171. Submission of types for approval.
4172. Certificates of approval; notice of disapproval; appeals.
4173. Manufacture, sale or use of unapproved weights, measures and devices.
4174. Marking of approved weights and measures.
4175. Marking of weights and measures "not legal for trade."
4176. Rules and regulations.
4177. Sealing of approved weights and measures.
4178. Fees.
4179. Enforcement.

Cross References. Subchapter D is referred to in sections 4154, 4180, 4181, 4182 of this title.

§ 4170. Approval of types of weights and measures and weighing and measuring devices.

The bureau is authorized to pass upon each type of weight and measure and weighing and measuring device manufactured,

offered or exposed for sale or sold or given away for the use in trade or commerce or used in trade or commerce in this Commonwealth, and to approve or disapprove of each type. The bureau shall approve each type of weight and measure and weighing and measuring device submitted to it for approval by any person if such type is so designed and constructed that it conforms to or gives correct results in terms of standard weights or measures or in terms of values derived therefrom, and is reasonably permanent in its indication and adjustment, and does not facilitate the perpetration of fraud; otherwise, the bureau shall disapprove the same. Certificates of conformance issued under the National Type Evaluation Program (NTEP), as administered by the National Conference of Weights and Measures, shall be recognized by the bureau. The director of the bureau may require any weight or measure or any weighing or measuring instrument or device to be issued a certificate of conformance, as issued by the National Institute of Standards and Technology, prior to use for commercial or law enforcement purposes. Weighing and measuring devices sold within this Commonwealth and designed to calculate a service for a charge shall only be subject to provisions of this subchapter upon issuance of a rule or regulation by the department, specifically designating which services and types of devices would be subject to type approval by the bureau. When issuing such rules or regulations, the department may grandfather by exemption devices already installed and used for calculating a service.

§ 4171. Submission of types for approval.

The submission of a type may be by sample or by specifications if, in the best judgment of the bureau, such specifications are adequate or in such other manner as may be prescribed by the rules and regulations promulgated under the authority of this subchapter.

§ 4172. Certificates of approval; notice of disapproval; appeals.

When a type of weight or measure or weighing or measuring device is approved, the bureau shall issue a certificate of approval to the person submitting such type. When a type is disapproved, the bureau shall notify the person submitting the same of its decision, setting out the reasons therefor, together with such information and references as may be useful in judging of the propriety of the disapproval, and shall give the person an opportunity to be heard in support of his application for approval. The bureau shall then reconsider its decision. If the new decision is adverse to the person and he is dissatisfied with the same, he may take an appeal from this decision to the department, which shall examine the matter and decide whether the type should be approved or disapproved. If the person is dissatisfied with the decision of the department, he may appeal in accordance with the law.

§ 4173. Manufacture, sale or use of unapproved weights, measures and devices.

It shall be unlawful for any person to manufacture, offer or expose for sale or sell or give away for use in trade or commerce or to use in trade or commerce any weight or measure or weighing and measuring device of a type not approved in accordance with the provisions of this subchapter.

§ 4174. Marking of approved weights and measures.

It shall be unlawful to manufacture, offer or expose for sale or sell or give away for use in trade or commerce or to use in trade or commerce any weight or measure or weighing or measuring device unless it shall be conspicuously, clearly and permanently 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 the design of the device and in such manner as may be prescribed by rules and regulations authorized by this subchapter, provided, however, that, whenever it shall appear to the satisfaction of the bureau that any type of weight or measure or weighing or measuring device is such as to render it impracticable to mark it as required by this section, the bureau shall furnish a certificate to that effect to any manufacturer applying for the same, and such weights and measures and weighing and measuring devices need not be marked as required by the provisions of this section.

§ 4175. Marking of weights and measures "not legal for trade."

It shall be conclusively presumed that a weight or measure or weighing or measuring device is intended for use in trade or commerce if it is manufactured, offered or exposed for sale or sold for use in this Commonwealth, or is used therein, unless it shall bear a plain, legible, conspicuous and permanent statement to this effect: "Not legal for trade." It shall be unlawful to use in trade or commerce any weight or measure or weighing or measuring device which is marked as described above, provided, however, that, whenever it shall appear to the satisfaction of the bureau that any type of weight or measure or weighing or measuring device is such as to render it impracticable to mark it as required by this section or is of such design and construction that it is obviously not intended for use in trade or commerce, the bureau shall furnish a certificate to that effect to any manufacturer applying for the same, and such types of weights and measures and weighing and measuring devices need not be marked as required by the provisions of this section.

§ 4176. Rules and regulations.

Rules and regulations for the carrying out and enforcement of the provisions of this subchapter, not inconsistent with the provisions thereof, shall be adopted by the department, which rules and regulations shall include reasonable variations or tolerances which may be allowed on weights and measures and weighing and measuring devices included within the provisions of this subchapter, and also specifications for such weights and measures and weighing and measuring devices for the guidance of manufacturers in the design and construction of such weights and measures and weighing and measuring devices.

§ 4177. Sealing of approved weights and measures.

Inspectors of weights and measures of this Commonwealth and sealers of the several counties and cities of this Commonwealth may seal, for use in trade or commerce, all weights and measures and weighing and measuring devices, the type of which has been approved as required by the provisions of this subchapter or specifically exempted from the necessity of approval by the provisions of this subchapter when they find that the same are within the tolerances prescribed under the rules and regulations, provided, however, that this shall not be construed as meaning that the approval of a type shall be taken as evidence of the correctness of any individual weight or measure or weighing or measuring device of that type or prevent any such inspector or sealer of weights and measures from prohibiting the use of or confiscating any individual weight or measure or weighing or measuring device which is found to be inaccurate or otherwise defective or unlawfully used.

§ 4178. Fees.

The Department of General Services shall charge and collect fees for actual metrology laboratory calibration, type

evaluation and any other testing services which may be rendered. The department shall establish and alter these fees by regulation. Agencies of this Commonwealth shall be exempt from the fee requirements of this section. A city or county which is required to procure standards of weights and measures and any additional equipment in accordance with section 4123 (relating to city and county standards and equipment) to enforce the provisions of this chapter shall be exempt from the fee requirements of this section with respect to the calibration, evaluation or other testing of those standards and equipment.

§ 4179. Enforcement.

It shall be the duty of the bureau and the sealers of weights and measures of the several counties and cities who shall find satisfactory evidence of any violation of the provisions of this subchapter to cause appropriate proceedings to be commenced and prosecuted, without delay, for the enforcement of the penalties as provided for in this chapter.

SUBCHAPTER E
DOMESTIC FUEL OIL

Sec.

4180. Meter required.
4181. Small deliveries.
4182. Exceptions.
4183. Enforcement of chapter, rules and regulations.

§ 4180. Meter required.

(a) Metered vehicle.--No person shall deliver light fuel oils to any domestic consumer unless the vehicle by which such light fuel oils are delivered is equipped with a meter of a type capable of furnishing a printed delivery ticket approved under provisions of Subchapter D (relating to device type approval). Each meter-printed delivery ticket shall bear a printed nonrepetitive serial number. All deliveries of light fuel oil to such consumers shall be made by the use of a meter and a meter-printed delivery ticket rendered the customer at the time of delivery or with the invoice. The seller or deliverer shall maintain the receipts for two years in an orderly and retrievable manner.

(b) Delivery tickets.--The delivery tickets required under subsection (a) shall be of a type approved by the department and shall include the following information:

(1) The vendor's name and address.
(2) The date and time of delivery.
(3) The purchaser's name and address.
(4) Product identification.
(5) The driver's signature or employee number.
(6) The delivery vehicle's permanently assigned company truck number.
(7) The price per gallon.
(8) The volume in terms of gallons to the nearest one-tenth of a gallon.

§ 4181. Small deliveries.

Fuel oil deliveries of 50 gallons or less may be delivered without being metered, provided that the delivery be made in standard measures of not less than five gallons capacity and provided further that only such measures as approved by Subchapter D (relating to device type approval) be used.

§ 4182. Exceptions.

The provisions of this subchapter shall not apply to deliveries of heavy fuel oils nor to deliveries of light fuel

oils to industrial plants, nor where either the entire truck tank load of light fuel or the entire load of light fuel oil in one compartment of the truck tank is delivered to a single domestic consumer, provided such tank truck is of a type approved under provisions of Subchapter D (relating to device type approval).

§ 4183. Enforcement of chapter, rules and regulations.

(a) Duties.--It shall be the duty of the department and the sealers of weights and measures of the several counties and cities to enforce the provisions of this subchapter.

(b) Regulations.--The department shall have power to adopt and promulgate such rules and regulations not inconsistent with the provisions of this subchapter as may be deemed necessary to carry into effect the intent and purpose of this subchapter.

SUBCHAPTER F
AUTOMOTIVE FUEL TESTING AND DISCLOSURE PROGRAM

Sec.

4187.1. Scope of subchapter.
4187.2. Definitions.
4187.3. Automotive Fuel Testing and Disclosure Program.
4187.4. Standards for automotive fuel.
4187.5. Automotive fuel rating, disclosure and labeling requirements.
4187.6. Investigations.
4187.7. Violations and penalties.
4187.8. (Reserved).

Enactment. Subchapter F was added November 1, 2012, P.L.1672, No.208, effective in 30 days.

§ 4187.1. Scope of subchapter.

This subchapter relates to automotive fuel testing and disclosure.

§ 4187.2. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"American Society for Testing and Materials International" or **"ASTM."** A member-based, international standards organization that develops and publishes voluntary consensus technical standards and test methods for a variety of materials and products, including automotive fuel and other petroleum products, or any successor organization.

"Automotive fuel." Any liquid or gaseous matter used for the generation of power in an internal combustion engine. The term shall include, but may not be limited to, the following:

(1) Automotive spark-ignition engine fuel, which includes, but is not limited to:

(i) Gasoline.

(ii) Gasohol, a mixture of unleaded gasoline and at least 10% denatured ethanol.

(iii) Fuels developed to comply with the Clean Air Act (69 Stat. 1, 42 U.S.C. § 7401 et seq.), such as reformulated gasoline and oxygenated gasoline.

(2) Alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol and other alcohols.

(ii) Mixtures of gasoline containing 85% or more by volume of methanol, denatured ethanol and other alcohols.

(iii) Liquefied natural gas.

(iv) Liquefied petroleum gas.

(v) Coal-derived liquid fuels.

"Automotive fuel rating." For gasoline, the octane rating, or, for alternative liquid automotive fuel, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percent by volume, of the principal components of the fuel.

"Consumer." A person who purchases automotive fuel for purposes other than resale.

"Dispenser" or **"dispensing system."** A device designed to measure and deliver automotive fuel into the fuel supply tank of a motor vehicle.

"Distributor." A person who receives automotive fuel in this Commonwealth for subsequent distribution to another person other than the consumer.

"EPA." The United States Environmental Protection Agency.

"FTC." The United States Federal Trade Commission.

"Fueling dispensers." Individual fueling points, recognized by price and volume displays for a dispenser's points of sale.

"Octane rating" or **"octane number."** The rating of the antiknock characteristics of a grade or type of automotive fuel as determined by dividing by two the sum of the research octane number plus the motor octane number unless another procedure is determined by the Department of Agriculture to be more appropriate for the purposes of this subchapter.

"Oxygenate." A substance which, when added to gasoline, increases the amount of oxygen in the gasoline blend.

"Oxygenate blender." A person who owns, leases, operates, controls or supervises an oxygenate blending facility.

"Oxygenate blending facility." A refinery, bulk terminal, bulk plant, other facility or truck or another place at which oxygenated gasoline is produced or blended.

"Oxygenated gasoline." Gasoline which contains at least 2% oxygen by weight.

"Producer." A person who purchases component elements and blends them to produce or market automotive fuel.

"Program." The Automotive Fuel Testing and Disclosure Program.

"Refiner." A person engaged in the manufacture, production or importation of automotive fuel.

"Reformulated gasoline." Any gasoline which is certified by the United States Environmental Protection Agency as complying with the requirements of 42 U.S.C. § 7545 (relating to regulation of fuels) and any regulations promulgated under the Clean Air Act (69 Stat. 1, 42 U.S.C. § 7401 et seq.).

"Research octane number" and "motor octane number." The terms shall have the meanings given to them in the specifications of the American Society for Testing and Materials International entitled "Standard Specifications for Automotive Spark Engine Fuel," designated D4814 or any subsequent updated specification, and, with respect to any grade or type of automotive fuel, are determined in accordance with the test methods set forth in American Society for Testing and Materials International standard test methods for research octane number and motor octane number as may be adopted by the Federal Trade Commission.

"Retailer." A person who sells or offers for sale automotive fuel to the general public for ultimate consumption.

§ 4187.3. Automotive Fuel Testing and Disclosure Program.

(a) Authorization.--The department may establish and implement the Automotive Fuel Testing and Disclosure Program to provide for the testing of automotive fuel on a random, unannounced basis.

(b) Duties of department.--The department may enforce the provisions of this subchapter and shall have the following authority:

(1) Take samples of automotive fuel for testing of its octane rating wherever it is offered or exposed for sale or use or sold by a retailer in this Commonwealth. When testing occurs, it shall be coordinated with the testing required for proper volumes of gasoline.

(2) Inspect and test on a random, unannounced basis and upon consumer complaint. If the octane rating of a tested automotive fuel does not match the octane rating as displayed on the fueling dispenser, the automotive fuel sample shall be tested in accordance with the methods of the ASTM or other test methods adopted by the FTC under the Petroleum Marketing Practices Act (Public Law 95-297, 15 U.S.C. § 2801 et seq.) to ensure that the motor fuel sample is in compliance with the motor fuel specifications of the ASTM.

(3) Maintain records of all inspections.

(4) Inspect the labeling of automotive fuel dispensers and storage tanks at retail businesses or locations where the products are sold or offered or exposed for sale or use.

(5) Enter into contractual agreements with qualified laboratories as a cost-saving measure for the purpose of analyzing automotive fuel samples, if the octane level of the automotive fuel is questioned.

(6) Promulgate regulations as necessary for the enforcement and administration of this subchapter. All regulations adopted by the FTC under the Petroleum Marketing Practices Act to govern the certification, disclosure, posting and labeling of automotive fuel before, on or after the effective date of this section are adopted as regulations in this Commonwealth and shall remain in effect unless subsequently modified by regulations promulgated by the department.

(c) Sealers of weight and measures.--

(1) The department may enter into agreements with any city or county for which a sealer has been appointed for the enforcement of provisions of this subchapter and of rules or regulations promulgated under this subchapter.

(2) The sealer of a city or county shall have the same authority and shall perform the same duties within the city or county as are granted to and imposed upon the department with respect to the inspection, testing and taking of automotive fuel samples.

(3) The agreement shall provide that any revenues generated pursuant to enforcement activities carried out by the sealer of the city or county shall be retained by the city or county.

§ 4187.4. Standards for automotive fuel.

(a) Adoption of standards.--The department shall adopt the latest standards for automotive spark ignition engines based on the latest standards of the ASTM as determined by the FTC. The standards shall be published as a notice in the Pennsylvania Bulletin.

(b) Automotive fuel.--Automotive fuel sold, offered or exposed for sale or stored or held for distribution in this Commonwealth shall comply with all of the following:

(1) Volatility requirements promulgated by the EPA under 40 CFR Pt. 80 (relating to regulation of fuels and fuel additives) or any supplement thereto or revisions thereof.

(2) The Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Regulation as adopted by the National Conference on Weights and Measures in the National Institute of Standards and Technology Handbook 130 and any supplements and revisions of the regulation.

(b.1) Vapor pressure specifications.--The department may, by publication of notice in the Pennsylvania Bulletin, adopt vapor pressure specifications for gasoline ethanol blends which shall remain in effect until the ASTM adopts such specifications, at which point the ASTM vapor pressure specifications shall apply. A notice published prior to the effective date of this subsection shall be deemed effective as of the date of publication.

(c) Records and compliance review.--Each distributor, producer or retailer who distributes, produces, blends, transports, stores, sells or offers or exposes for sale automotive fuel in this Commonwealth shall maintain for one year original copies of all bills, manifests, delivery tickets and invoices for the purpose of compliance review.
(July 8, 2016, P.L.522, No.80, eff imd.)

2016 Amendment. Act 80 added subsec. (b.1).

Cross References. Section 4187.4 is referred to in sections 4187.6, 4187.7 of this title.

§ 4187.5. Automotive fuel rating, disclosure and labeling requirements.

(a) Disclosure requirements.--Each distributor, producer or refiner who sells or offers or exposes for sale or delivers, distributes, blends or produces automotive fuel in this Commonwealth shall provide, at the time of delivery, a bill, shipping manifest or other type of written invoice to the person who receives the automotive fuel. The bill, shipping manifest or other written invoice shall state the automotive fuel rating.

(b) Posting and labeling requirements.--

(1) Each retailer of automotive fuel in this Commonwealth shall label in a clear and conspicuous manner each automotive fuel dispenser which is used to sell or offer or expose for sale automotive fuel, with the automotive fuel rating of the fuel, which shall be consistent with the automotive fuel rating certified to the retailer by the refiner, distributor or oxygenate blender, as the case may be.

(2) In the case of gasoline which is blended with other gasoline, the automotive fuel rating shall be the average, weighted by volume, of the octane rating certified to the retailer by the distributor or refiner for each gasoline in the blend or consistent with the lowest octane rating for any gasoline in the blend as certified to the retailer by a refiner or distributor.

(c) Oxygenated gasoline labeling requirements.--A person who sells or offers or exposes oxygenated gasoline for sale shall clearly and conspicuously label the dispenser which is used to sell oxygenated gasoline at retail or to dispense oxygenated gasoline into the fuel supply tanks of motor vehicles with a notice stating that the gasoline is oxygenated.

(d) (Reserved).

Cross References. Section 4187.5 is referred to in sections 4187.6, 4187.7 of this title.

§ 4187.6. Investigations.

(a) General rule.--The department may conduct investigations to determine compliance with this subchapter. Investigations shall be conducted in accordance with sections 4116 (relating to investigations) and 4120 (relating to police powers; right of entry and stoppage). Inspections may be performed during normal business hours and may include the collection and removal of samples for laboratory testing if the quality or reliability of the automotive fuel is questioned.

(b) Entry upon premises.--

(1) The department may enter the premises and access records of any establishment where automotive fuel is stored, held, produced, distributed, offered or exposed for sale or sold in this Commonwealth to:

(i) Inspect the automotive fuel in storage tanks and take samples from the tanks and the dispensing system connected to the storage tanks. The retailer or distributor may request a second sample to be taken by the inspector at the same time the initial sample is drawn. All costs of the second sample shall be paid by the retailer or distributor, as the case may be, making the request. If the request for a second sample is made by the retailer in accordance with procedures established through an agreement with the distributor, producer or refiner, all costs of drawing, handling and shipping the sample shall be borne by the distributor, producer or refiner who supplied the automotive fuel to the retailer. If the request for a second sample is made by the distributor in accordance with procedures established through an agreement with the producer or refiner, all costs of drawing, handling and shipping the sample shall be borne by the producer or refiner who supplied the automotive fuel to the distributor.

(ii) Inspect automotive fuel dispensing systems and related equipment, oxygenate labels, reformulated labels and octane labels.

(iii) Make copies of automotive fuel shipping, receiving and invoice documents and records to determine compliance with sections 4187.4 (relating to standards for automotive fuel) and 4187.5 (relating to automotive fuel rating, disclosure and labeling requirements).

(2) The department shall limit inspections, compliance reviews and copying under this subsection to information and data relating to product quantity, quality, oxygen content, octane, source and other information as may be reasonably requested.

(c) Remedies.--If the department determines that an automotive fuel sample does not conform with the standards set forth in section 4187.4 or that a label displayed on a dispensing system, storage tank or other dispensing device does not conform with the requirements of section 4187.5, the department may initiate any or all of the following actions to prohibit sale of the nonconforming automotive fuel or to prohibit the use of the nonconforming dispensing system, storage tank or other dispensing device:

(1) Reject and mark as rejected the dispensing system, storage tank or other dispensing device from which the sample was obtained or on which the nonconforming label is attached.

(2) Seal and mark as sealed the storage tanks from which the sample was drawn or the nonconforming label attached.

(3) Initiate criminal proceedings under section 4187.7(d) (relating to violations and penalties).

(4) Issue a citation.

(5) Issue a stop-sale notice under subsection (d).

(6) Advise the retailer or distributor that the automotive fuel must be blended with another automotive fuel to bring it into compliance, provided that the product does not endanger public health or safety or adversely affect the emissions characteristics of the motor vehicles in which it is used.

(7) Issue a written warning directing the retailer or distributor to correct the nonconforming label.

(d) Stop-sale notice.--

(1) The department may immediately seize and seal, in order to prevent further sales, any dispensing system, storage tank or other dispensing device from which automotive fuel is sold or offered or exposed for sale in violation of the provisions of this subchapter and to issue a stop-sale notice to the retailer or distributor if the department has reason to believe the retailer or distributor willfully or intentionally violated this subchapter or the regulations promulgated in accordance with this subchapter.

(2) No automotive fuel subject to a stop-sale notice may be sold, exposed, offered for sale or transported unless the retailer or distributor has received approval from the department.

(3) No automotive fuel which has been seized and sealed by the department for violation of section 4187.4 or 4187.5 may be offered or exposed for sale until the department has been fully satisfied that the automotive fuel has been blended, refined or properly labeled to meet the requirements of this subchapter and the retailer or distributor has been notified of the department's decision to permit the sale or relabeling of the fuel.

(e) Posting of stop-sale notice.--The department shall post, in a conspicuous place on the premises where a dispensing system, storage tank or other dispensing device has been sealed, a notice stating that sealing has taken place and warning that it shall be unlawful to break, mutilate or destroy the seal or to remove the contents of the dispensing system, storage tank or other dispensing device without the approval of the department.

(f) Notice required to remove seal.--

(1) A retailer, distributor or producer who owns an automotive fuel dispensing system, storage tank or other dispensing device which has been sealed by the department shall obtain the approval of the department before the fuel is removed or a proper label attached.

(2) A written notice of any corrective action taken shall be submitted to the department within three working days.

(3) The department may reinspect the automotive fuel dispensing system, storage tank or other dispensing device to determine compliance. The retailer, distributor, producer or refiner that owns the system or device which has been sealed shall provide documentation of the corrective action taken, including any applicable shipping papers or bills of lading showing the disposal or final disposition of the automotive fuel and any other information necessary to permit

the department to audit and confirm that the corrective action was as previously approved by the department.

(4) No retailer, distributor, producer or refiner may remove a seal, except when given specific approval by the department.

§ 4187.7. Violations and penalties.

(a) Retail violations.--The department may assess a civil penalty of not more than $5,000 upon a retailer who sells or offers or exposes for sale automotive fuel from any dispensing system, storage tank or other dispensing device which has not been labeled in accordance with the provisions of this subchapter or who sells or offers or exposes for sale any automotive fuel which does not meet or exceed the required standards for the automotive fuel rating displayed on the label attached to the dispensing system, storage tank or other dispensing device or who sells or offers or exposes for sale automotive fuel which has been contaminated.

(b) Distributor, producer or refiner violations.--The department may assess a civil penalty of not more than $5,000 upon a distributor, producer or refiner who sells or offers or exposes for sale automotive fuel which does not meet the automotive fuel rating certified by the distributor, producer or refiner or who sells or offers or exposes for sale automotive fuel which does not meet the requirements of section 4187.4 (relating to standards for automotive fuel).

(c) Knowledge of deceptive practice.--In addition to any civil penalty imposed for violations of subsection (a) or (b), the department may assess a distributor, producer, refiner or retailer with an additional civil penalty equal to:

(1) the difference between the price per gallon charged to the consumer for the automotive fuel in question and the price per gallon charged to the consumer for the lowest octane grade at the retail dispensing facility at the time of the violation; and

(2) multiplied by the capacity of the storage tank from which the product in question was dispensed;

if the distributor, producer, refiner or retailer violates any provisions of this subchapter with actual knowledge that the act or practice underlying the violation is unfair or deceptive.

(d) Repeat violations.--In addition to any civil penalty assessed in accordance with the provisions of this section, the department may initiate criminal proceedings for a second or subsequent violation of sections 4187.4 and 4187.5 (relating to automotive fuel rating, disclosure and labeling requirements). A second or subsequent violation shall constitute a misdemeanor of the third degree.

(e) Removal of seals.--The department may assess a civil penalty of not less than $1,000 nor more than $5,000 on any person, other than a person designated by the department, who:

(1) breaks, mutilates or destroys any seal placed upon a dispensing system, storage tank or other dispensing device used to deliver or store automotive fuel;

(2) removes automotive fuel from a dispensing system, storage tank or other dispensing device which has been sealed; or

(3) defaces or removes a posted notice of sealing.

(f) Hearings.--No civil penalty shall be assessed under this section unless the person charged has been given notice and opportunity for hearing in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(g) Innocent sellers exemption.--The department shall not impose a civil penalty for a violation of subsection (a)

regarding labeling if the retailer labeled the dispensing system, storage tank or other dispensing device in reasonable reliance on documentation provided by the distributor, producer or refiner certifying the standards for automotive fuel rating.

(h) Private action by retailer.--If a retailer unknowingly and without deception sells or offers or exposes for sale automotive fuel which does not conform with the provisions of this subchapter, the distributor, producer, oxygenate blender or refiner, as the case may be, of the nonconforming automotive fuel shall be liable in damages to the retailer for any ascertainable loss of money or property.

(i) Acts or practices constituting unfair trade.--It shall be an unfair method of competition and an unfair or deceptive act or practice in or affecting trade and commerce in this Commonwealth within the meaning of section 3 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, for any retailer, producer, distributor, oxygenate blender or refiner to violate the provisions of this subchapter or any regulations promulgated under this subchapter.

Cross References. Section 4187.7 is referred to in section 4187.6 of this title.

§ 4187.8. (Reserved).

SUBCHAPTER G
MISCELLANEOUS PROVISIONS

Sec.

4190. Rules and regulations.
4191. Offenses and penalties.
4192. Temporary or permanent injunctions.
4193. Disposition of funds.
4194. Validity of prosecutions.

Subchapter Heading. Subchapter G was relettered from Subchapter F November 1, 2012, P.L.1672, No.208, effective in 30 days.

§ 4190. Rules and regulations.

The department shall have the power to adopt and promulgate rules and regulations necessary to carry out the provisions of this chapter. All previous rules and regulations shall remain in full force and effect until new or amended rules and regulations are adopted by the department.

§ 4191. Offenses and penalties.

(a) Criminal penalties.--A person who violates any provision of this chapter or any rule, regulation, standard or order made under this chapter commits a summary offense for the first or second offense. A person who violates any provision of this chapter or any rule, regulation, standard or order made under this chapter commits a misdemeanor of the third degree if the violation is a third or subsequent offense and if the violation occurs within two years of the date of the last previous offense.

(b) Civil penalties.--In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted or any order issued under this chapter, the department may assess a civil penalty not to exceed $10,000 upon an individual or business for each offense. No civil penalty shall be assessed

unless the person charged has been given notice and opportunity for a hearing in accordance with law. In determining the amount of the civil penalty, the department shall consider the gravity of the violation. Whenever the department finds a violation which did not cause harm to the public interest, the department may issue a warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or failure of any person to pay all or any portion of the penalty as the department may determine, the department may refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

(c) Offenses by inspectors or sealers.--Any inspector or sealer who violates section 4142(b) (relating to prohibited acts) commits a misdemeanor of the second degree.

Cross References. Section 4191 is referred to in sections 4140, 4141 of this title.

§ 4192. Temporary or permanent injunctions.

In addition to any other remedies provided in this chapter, the department may apply to the Commonwealth Court or to any other court having jurisdiction for a temporary or permanent injunction restraining a person from violating any provision of this chapter or any regulation adopted under this chapter, regardless of whether there exists an adequate remedy at law.

Cross References. Section 4192 is referred to in sections 4121, 4122 of this title.

§ 4193. Disposition of funds.

(a) Deposit in State Treasury.--When the proceeding is instituted by the department, moneys received from fines and civil penalties shall be paid into the State Treasury and shall be credited to the general government appropriations of the Department of Agriculture for administering the provisions of this chapter.

(b) Local share.--Notwithstanding subsection (a), if the proceeding is instituted by a city or county which has entered into a memorandum of understanding with the department to enforce the provisions of this chapter, moneys received from fines and civil penalties shall be paid to the city or county.

(c) Department of General Services.--Moneys received from fees imposed and collected by the Department of General Services for inspection and testing services provided by the State Metrology Laboratory shall be paid into the State Treasury and shall be credited to the general government appropriations of the Department of General Services for the operation and maintenance of the State Metrology Laboratory.

§ 4194. Validity of prosecutions.

Prosecutions for violation of any provision of this chapter are declared to be valid and proper notwithstanding the existence of any other valid general or specific act of this Commonwealth dealing with matters that may be the same as or similar to those covered by this chapter.

CHAPTER 42
AQUACULTURAL DEVELOPMENT

Subchapter

A. General Provisions
B. Aquacultural Development

Enactment. Chapter 42 was added October 16, 1998, P.L.768, No.94, effective in 60 days.

Special Provisions in Appendix. See the preamble and section 2 of Act 94 of 1998 in the appendix to this title for special provisions relating to legislative findings and duties of Department of Agriculture.

Cross References. Chapter 42 is referred to in section 2507 of Title 30 (Fish).

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

4201. Short title of chapter.
4202. Purpose.
4203. Definitions.
4204. Applicability.

§ 4201. Short title of chapter.

This chapter shall be known and may be cited as the Aquacultural Development Law.

§ 4202. Purpose.

The purposes of this chapter are as follows:

(1) To encourage aquacultural operators to make a long-term commitment to aquaculture by offering them the same protections afforded other agricultural practices.

(2) To reduce the amount of governmental agencies with jurisdiction over aquaculture by transferring authority over commercial aquacultural operations to the Department of Agriculture.

(3) To encourage further development of the aquacultural industry by including aquaculture in any and all promotional and other economic developmental programs which are made available to other industry sectors.

§ 4203. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The Aquaculture Development Account.

"Advisory committee." The Aquaculture Advisory Committee in the Department of Agriculture.

"Aquaculture." A form of agriculture which is the controlled cultivation of aquatic plants, animals and microorganisms.

"Aquarium species." Any aquatic species which may not be propagated in open air facilities within this Commonwealth under normal circumstances and are primarily kept indoors in glass aquariums for their aesthetic value.

"Aquatic organism." Any plant or animal that grows or lives in or upon the water.

"Artificial propagation." Rearing any species of fish during any stage of the species' life cycle from inception by natural or artificial means to the adult stage of the species.

"Baitfish." The following fish, unless otherwise provided by departmental regulation:

(1) All forms of the minnow family (Cyprinidae) except carp and goldfish.

(2) Suckers, chubs, fallfish, lampreys and eels measuring less than eight inches in length.

(3) All forms of darters, killifish and madtoms (otherwise known as stonecats).

"Commission." The Pennsylvania Fish and Boat Commission.

"Department." The Department of Agriculture of the Commonwealth.

"Finfish." True fish which are any number of strictly aquatic craniate vertebrates that include the teleosts, elasmobranches and cyclostomes. These fish typically have an elongated, spindle-shaped body terminating in a caudal fin.

"Fish." When used as a noun, the term includes all game fish, fish bait, baitfish, amphibians, reptiles and aquatic organisms.

"Hobby breeder." Any person who keeps and propagates aquatic animals on a small scale. A small scale is gross annual sales of less than $1,000.

"Ornamental species." Any aquatic organism kept primarily for its aesthetic value which can be propagated in open-air facilities within this Commonwealth under normal circumstances.

"Pet store." A commercial outlet engaged in the retail sale of pets and related products to the public.

"Secretary." The Secretary of Agriculture of the Commonwealth.

"Watershed." One of the five major watersheds located within this Commonwealth:

(1) Lake Erie.
(2) Ohio.
(3) Delaware.
(4) Susquehanna.
(5) Potomac.

Smaller watersheds not considered as part of these five shall be identified by the Pennsylvania Fish and Boat Commission as annexes to one of the five listed.
(Mar. 28, 2000, P.L.34, No.9, eff. 60 days)

2000 Amendment. Act 9 added the def. of "pet store."

§ 4204. Applicability.

This chapter does not apply to a pet store making a purely retail sale or offer for sale of species of fish legally approved for sale in this Commonwealth.
(Mar. 28, 2000, P.L.34, No.9, eff. 60 days)

2000 Amendment. Act 9 added section 4204.

SUBCHAPTER B
AQUACULTURAL DEVELOPMENT

4211. Designation of aquaculture as agriculture.
4212. Wetlands.
4213. Requirements for discharge of water.
4214. Aquacultural marketing programs.
4215. Aquacultural plan.
4216. Aquaculture Advisory Committee.
4217. Biennial survey of aquaculture.
4218. Aquaculture Development Account.
4219. Permissible propagation.
4220. Registration for artificial propagation.
4221. Activities under registration for artificial propagation.
4222. Registration for dealers of live aquatic animals.
4223. Prohibited propagation and penalties.

§ 4211. Designation of aquaculture as agriculture.

Aquaculture is hereby designated as a normal farming operation within this Commonwealth for all purposes. This designation shall be recognized by all agencies of State and local government.

§ 4212. Wetlands.

Aquacultural facilities licensed pursuant to this chapter are not wetlands under 25 Pa. Code Ch. 105 Subch. A (relating to general provisions) so long as such facilities were created and have been continuously operating for any purpose, including effluent mitigation, prior to September 23, 1985. Facilities created on or after September 23, 1985, are not wetlands under any statute or regulation of this Commonwealth so long as the facilities are or were not created nor are currently maintained on wetlands. Normal maintenance and improvements on facilities created prior to September 23, 1985, are permissible notwithstanding any statutory provision relating to wetlands. Permits issued by the Commonwealth for normal maintenance and improvements of facilities created prior to September 23, 1985, are not required.

§ 4213. Requirements for discharge of water.

(a) General permit.--Except as provided in subsection (b), aquacultural facilities, including those existing facilities which discharge into high quality or exceptional value waters, licensed under this chapter may be eligible for inclusion under a National Pollutant Discharge Elimination System (NPDES) general permit issued pursuant to regulations of the Department of Environmental Protection.

(b) Permitting system.--The Department of Environmental Protection is directed to develop an NPDES general permit for aquacultural facilities. Net effluent limitation, monitoring type and frequency of pollutants shall be determined in consultation with the Department of Agriculture and the advisory committee. The fee for an applicant seeking coverage to discharge pursuant to the terms and conditions of the general permit shall not exceed $100 per facility during a period of five years.

(c) Consolidation of permitting.--All agencies of the Commonwealth are directed to work with the Department of Environmental Protection to develop a consolidated permitting process for aquacultural facilities. This consolidated permitting process shall result in one permit to replace potentially several permits necessary for an applicant to file. This consolidated permitting process shall be developed and implemented on or before January 1, 2000.

Cross References. Section 4213 is referred to in section 4218 of this title.

§ 4214. Aquacultural marketing programs.

The department may develop voluntary aquacultural marketing programs. The department may request nominal payment by participants to cover costs of these programs.

§ 4215. Aquacultural plan.

(a) Development of plan.--The department shall develop a plan to promote and develop aquacultural industry in this Commonwealth. Economic development and exportation of products from this Commonwealth shall be components of this plan. The advisory committee shall advise the department in development of the plan. The department must obtain the consent of the advisory committee for the plan.

(b) Implementation of plan.--The department shall, in the manner provided by law, promulgate the plan as regulations of the department.

§ 4216. Aquaculture Advisory Committee.

(a) Establishment and composition.--The Aquaculture Advisory Committee is hereby established as a departmental advisory board

within the department. The advisory committee shall consist of 21 members of whom the following 12 shall be members ex officio:

(1) The secretary.

(2) The Secretary of Environmental Protection.

(3) The Secretary of Community and Economic Development.

(4) The Executive Director of the Pennsylvania Fish and Boat Commission.

(5) The chairman and minority chairman of the Agriculture and Rural Affairs Committee of the Senate.

(6) The chairman and minority chairman of the Agriculture and Rural Affairs Committee of the House of Representatives.

(7) The chairman and minority chairman of the Game and Fisheries Committee of the Senate.

(8) The chairman and minority chairman of the Game and Fisheries Committee of the House of Representatives.

Ex officio members may designate a substitute for membership. Ex officio members cast votes at committee meetings.

(b) Appointments by secretary.--The remaining nine members shall be appointed by the secretary as follows:

(1) Three appointees must be active, resident cold or cool water aquaculture producers.

(2) One appointee must be an active, resident warm water aquaculture producer.

(3) One appointee must be an active, resident indoor aquaculture producer.

(4) One appointee must be an active, resident servicer or supplier to the aquaculture industry.

(5) One appointee must be an active, resident aquacultural wholesaler, food broker or food merchant.

(6) One appointee must be an active, resident aquarium or ornamental species aquacultural merchant.

(7) One appointee must be a representative of recreational sport fishing.

(c) Tenure and convention.--All appointed members shall serve terms of three years. Ex officio members shall serve so long as the official continues to serve in an official position. The advisory committee shall convene at the discretion of the secretary or his designee, who shall serve as chairman of the committee.

(d) Responsibility of committee.--The advisory committee shall draft and submit an aquacultural plan to the secretary on or before December 31, 1999. The focus of the plan shall be economic development to include recommendations for regulations necessary to foster development of aquaculture. The advisory committee shall also advise the secretary on matters relating to aquacultural production and development.

§ 4217. Biennial survey of aquaculture.

The department shall cooperate with the Pennsylvania Agricultural Statistics Service to compile biennially a survey of this Commonwealth's aquacultural industry. Persons licensed under sections 4220 (relating to registration for artificial propagation) and 4222 (relating to registration for dealers of live aquatic animals) whose businesses involve the sale of fish shall submit annually at the conclusion of each calendar year a summary report of sales specifying the amount or weight of each species sold and gross receipts. The contents shall be used by the department solely for statistics. The individual summary reports are not public records and shall not be made public without written consent of the party submitting that report.

Cross References. Section 4217 is referred to in section 4218 of this title.

§ 4218. Aquaculture Development Account.

(a) Establishment of account.--There is hereby established a separate account in the State Treasury to be known as the Aquaculture Development Account. Moneys in this account shall be used to stimulate the growth of the aquacultural industry in this Commonwealth.

(b) Sources of funds.--Except for fees generated pursuant to section 4213 (relating to requirements for discharge of water), all fees and charges generated under this chapter shall be deposited in the account.

(c) Use of funds.--Moneys in the account shall be used for administration of aquaculture programs in the department, including the biennial survey of aquaculture in section 4217 (relating to biennial survey of aquaculture). Up to 10% of the moneys deposited in the account on a fiscal year basis may be available for aquaculture research. After administrative costs are covered, the remainder of the account may be used to provide low-interest loans to aquacultural producers for development, expansion and modernization of facilities.

§ 4219. Permissible propagation.

(a) Species.--The commission shall determine which species of fish are allowed to be propagated in each watershed. On or before January 31 of each year, the commission shall supply the department a current list of species approved for propagation and the conditions under which each species may be cultured. As the commission approves a new species for propagation throughout the year, it shall notify the department of the species and watersheds. Except triploid and other nonreproducing forms, species may be propagated in the same watersheds within which they are allowed to be stocked.

(b) Initial list of approved species.--Except for those species of fish allowed for stocking only in a triploid or other nonreproducing form, the initial list of approved species shall include all species approved for artificial propagation or stocking by watershed as listed by the commission on January 1, 1995. Requirements for special conditions to culture certain species will be retained until modified. The initial list shall be submitted to the department within 60 days of the effective date of this chapter.

(c) Closed systems.--Special regulations shall be promulgated regarding the cultural methods for species of fish allowed to be propagated in systems which do not discharge water into waters of this Commonwealth. Systems whose discharge of water is rendered incapable of containing self-perpetuating living organisms may be registered for any species of fish with approval by the department.

Cross References. Section 4219 is referred to in section 4221 of this title.

§ 4220. Registration for artificial propagation.

(a) Application.--Application to register for artificial propagation shall be made on forms, prepared by the department, which relate to the size, character and purpose of the facility to be used for propagation. The species of fish to be propagated and each separate propagation facility as well as any other information required by the department shall also be indicated on the forms.

(b) Registration and fees.--The department may register applicants for artificial propagation upon receipt of a written application signed by the applicant after the applicant has

paid a fee of $150 to the department. Registration allows the registered operator to propagate all approved species of fish. The department shall establish a system to provide unique identification to a facility for the duration of that facility's continuous commercial existence. A registration shall expire five years after the initial date of registration. A registration may be renewed for an additional five-year period upon payment of the fee.

Cross References. Section 4220 is referred to in sections 4217, 4221, 4222, 4223 of this title.

§ 4221. Activities under registration for artificial propagation.

(a) Sale of certain species.--

(1) Only species of fish approved for propagation and stocking under section 4219 (relating to permissible propagation) taken from waters wholly within this Commonwealth or legally taken in waters outside of this Commonwealth and received in interstate commerce are permitted to be purchased, sold or offered for sale.

(2) A registrant selling species of fish shall furnish to the consumer a receipt specifying the date of sale, identification of the registered facility and the amount of species sold by count or weight. The holder of the receipt must display it upon demand to anyone authorized to enforce laws of this Commonwealth. The receipt authorizes sale or possession of the purchased species for a period of 15 days after the date on the receipt. The period of 15 days, however, is inapplicable to species stocked in regulated fishing areas as well as ornamental, aquarium and baitfish species which may be held by dealers until disposed.

(b) Water obstruction.--A person registered under section 4220 (relating to registration for artificial propagation) must obtain prior written approval from the Department of Environmental Protection to erect or place a dam, pond or other device which will prevent the free migration of finfish. This subsection permits dams, ponds and other devices erected prior to January 1, 1980, and used continuously since then to be maintained.

(c) Authorized activities by registrants.--Registration under section 4220 authorizes the registrant to:

(1) carry on the business of propagation and sale of species of fish and eggs thereof which are specified in the registration;

(2) catch and kill the specified species of fish in the specified facility or facilities in the registration by any means except explosives or poison; and

(3) sell, transport or dispose of species of fish and eggs thereof which are specified in the registration. Public transportation companies are authorized to receive and transport species and eggs.

(d) Unauthorized activities by registrants.--

(1) Registration under section 4220 does not authorize registrants to catch species of fish out of natural streams flowing over property of a registrant nor from other waters within this Commonwealth. Transportation of species of fish neither cultivated nor purchased by the registrant is not permitted.

(2) Species of fish or eggs thereof taken from waters within this Commonwealth unoccupied, unowned or uncontrolled by a registrant and uncovered by his registration shall neither be stocked nor maintained in any manner. This

paragraph, however, allows the exchange of eggs or the fry of any species of fish with the department and the commission.

Cross References. Section 4221 is referred to in section 4223 of this title.

§ 4222. Registration for dealers of live aquatic animals.

(a) Registration for dealing.--A resident or nonresident who does not propagate live aquatic animal species but deals in those species shall register with the department. The department may register applicants upon receipt of a written application signed by the applicant and the payment of a $50 registration fee. Registration shall expire five years after the initial date of registration and may be renewed upon payment of the fee.

(b) Records to be kept.--Registrants shall keep records of all transactions, buying and selling, and shall record the date, amount by count or weight of species of fish, source of species, registration identification and place of sale.

(c) Approval.--

(1) Distribution by dealers is limited to those species of fish approved by the department.

(2) Transportation of species of fish into this Commonwealth is limited to sources of species whose health inspection reports have already been approved by the department. Sources may be preapproved by the department for an entire calendar year. Denials shall be restricted to those sources where diseases are nonendemic to this Commonwealth and for any diseases designated by the department upon recommendation of the advisory committee.

(d) Exemption from registration.--Dealers who are registered under section 4220 (relating to registration for artificial propagation) are exempt from licensure under this section for those species of fish. Compliance with subsection (c) is, however, required.

Cross References. Section 4222 is referred to in section 4217 of this title.

§ 4223. Prohibited propagation and penalties.

(a) Prohibited propagation.--Except for hobby breeders, artificial propagation of any species of fish is limited to those who have registered under section 4220 (relating to registration for artificial propagation). Artificial propagation by anyone, whether or not registered, is limited to those species of fish approved under this chapter, approved by law or approved by regulation of the department.

(b) Penalties.--Any person who sells, offers to sell or purchases fish with a market value or sale price of $50 or more in violation of section 4221(a)(1) (relating to activities under registration for artificial propagation) commits a misdemeanor of the third degree. Any other violation of this subchapter as well as a violation of section 4221(a)(1) where the market value or sale price is not shown or is less than $50 is a summary offense of the first degree as described in 30 Pa.C.S. § 923 (relating to classification of offenses and penalties).

CHAPTER 45
AGRICULTURAL COMMODITIES MARKETING

Sec.

4501. Short title of chapter.

4502. Definitions.
4503. Powers and duties of secretary.
4504. Commodity marketing board.
4505. Provisions of marketing programs.
4506. Effecting marketing programs.
4507. Terminating marketing programs.
4508. Marketing program review and amendments.
4509. Notice of issuance.
4510. Collection of fees.
4511. Rules and regulations for enforcement.
4512. Advance deposits.
4513. Severability.

Enactment. Chapter 45 was added March 24, 1998, P.L.217, No.39, effective immediately.

§ 4501. Short title of chapter.

This chapter shall be known and may be cited as the Agricultural Commodities Marketing Act.

§ 4502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural commodity." Agricultural, aquacultural, horticultural, viticultural and dairy products, livestock and the products thereof, ranch-raised furbearing animals and the products thereof, the products of poultry and bee raising, forestry and forestry products and any and all products raised or produced on farms intended for human consumption and the processed or manufactured products thereof intended for human consumption, transported or intended to be transported in commerce.

"Commodity marketing board" or **"board."** The persons who are appointed by the Secretary of Agriculture from among producers whose commodities are subject to an issued marketing program.

"Cooperative association." Any cooperative marketing association of producers which the Secretary of Agriculture determines, after application by the cooperative association:

(1) to be qualified under the provisions of the Cooperative Marketing Association Act (42 Stat. 388, 7 U.S.C. §§ 291 and 292) and organized as a cooperative agricultural association under the laws of this Commonwealth and any other state; and

(2) to have full authority in the sale of affected agricultural commodity of its members and to be engaged in making collective sales of or marketing the commodity or its products for its members.

"Marketing contract." A contract or agreement between a commodity marketing board and a person for the performance of services relating to advertising, marketing, promotion, research or other objectives in furtherance of a marketing program.

"Marketing program." A program established pursuant to this chapter governing the collection of fees and administration of budgets to implement projects to benefit producers in this Commonwealth during any specified period or periods.

"Person." An individual, firm, corporation, association or any other business unit.

"Producer." A person engaged within this Commonwealth or a production area within this Commonwealth in the business of producing agricultural commodities or causing agricultural commodities to be produced.

"Sales agent." Any person, including individuals, partnerships, corporations, cooperative associations and

unincorporated cooperative associations, who purchases or handles or receives or sells or contracts to sell an affected agricultural commodity.

§ 4503. Powers and duties of secretary.

(a) Administration and enforcement of chapter.--Subject to the provisions contained in this chapter, the secretary shall administer and enforce the provisions of this chapter and shall have and shall exercise all administrative powers necessary to effectuate the purposes of this chapter, including the issuance of marketing programs, the appointment of members to commodity marketing boards as provided in section 4504 (relating to commodity marketing board) and the providing of personnel, staff, legal counsel and office facilities required for the administration and enforcement of marketing programs.

(b) Grounds for public hearing.--Whenever the secretary has reason to believe that the issuance of a marketing program or amendments to an existing marketing program will tend to effectuate this chapter, the secretary shall, either upon his own motion or upon application of any producer or any organization of producers, give due notice of an opportunity for a public hearing upon a proposed marketing program or amendments to an existing marketing program.

(c) Publication of notice of hearing.--Notice of any hearing called for this purpose shall be given by the secretary by publishing a notice of the hearing, for a period of not less than five consecutive publication days, in a daily newspaper of general circulation published in the capital of the Commonwealth and in any other newspaper or newspapers as the secretary may prescribe. No public hearing shall be held prior to 20 days after the last day of the period of publication.

(d) Mailing to producers.--The secretary shall also mail a copy of the notice of a hearing and a copy of the proposed marketing program or proposed amendments to all producers whose names and addresses appear upon lists of such persons which shall be compiled in the department.

(e) Specifics of notice.--The notice of hearing shall set forth the date and place of the hearing and the area covered by the proposed marketing program or the proposed amendments and a statement that the secretary will receive at the hearing, in addition to testimony and evidence as to the proposed marketing program, testimony and evidence as to other necessary and relevant matters, including rate of assessment, and with respect to the accuracy and sufficiency of lists on file with the secretary which show the names and addresses of producers and the quantities of agricultural commodities produced by the producers in the marketing season next preceding the hearing.

(f) Hearing requirements.--The hearing shall be public, and all testimony shall be received under oath. A full and complete record of all proceedings at the hearings shall be made and maintained on file in the office of the secretary. At hearings the secretary shall receive, in addition to other necessary and relevant matters, testimony and evidence regarding the rate of assessment and testimony and evidence with respect to the accuracy and sufficiency of the lists on file with the secretary which show the names of the producers and the quantities of agricultural commodities produced by the producers in the marketing season next preceding the hearing.

(g) Issuance of marketing program.--After notice and hearing, the secretary may issue a marketing program if the secretary finds and sets forth in the marketing program that the program will tend to effectuate the purposes of this chapter.

§ 4504. Commodity marketing board.

(a) Establishment of commodity marketing board.--

(1) Each marketing program issued pursuant to this chapter shall provide for the establishment of a commodity marketing board, which shall have primary decision-making authority relative to marketing contracts and other projects in furtherance of the program. The number, representation, qualifications and terms of board members and the schedule of regular board meetings and procedure for calling special board meetings shall be established in the issued marketing program. No marketing program shall be issued to establish a commodity board of less than five members, one of whom shall be the secretary or the secretary's designee. The other board members shall be appointed by the secretary from among the agricultural producers whose commodities shall be subject to the marketing program. In making these appointments, the secretary shall consider nominations submitted by the producers. No decision by the board shall be effective unless, pursuant to regular or special meetings, a majority of board members were present and a majority of those present voted in support of the decision. All decisions rendered by the board shall be recorded in written minutes of the meeting, and the recorded minutes shall be made available to the secretary and to the producers whose commodities are subject to the marketing program.

(2) If the secretary requires sales agents to collect producer charges under section 4510(b) (relating to collection of fees), an additional member shall be appointed to the board by the secretary. This member shall represent these sales agents who are subject to the marketing program collection agreement. In making the appointment, the secretary shall consider nominations by the sales agents.

(b) Board members.--No member of a commodity marketing board shall receive a salary, but each shall be entitled to actual expenses incurred while engaged in performing the duties authorized by this chapter. Any marketing program established under this chapter may authorize a payment not to exceed $100 per day and expenses for each day in which a board member or subcommittee member is performing a duty necessary to the function of the board.

(c) Powers and duties of board.--In administering the marketing program the board shall have the following powers and duties:

(1) To determine all matters pertaining to the marketing program issued by the secretary.

(2) To hire and employ personnel which the board deems necessary for the proper administration of the marketing program and to fix the compensation and terms of employment of personnel. The hiring, employment, compensation and terms of employment of personnel under this paragraph shall not be subject to the provisions of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(3) To adopt written procedures for acquiring and disposing of property and, subject to these procedures, to acquire, own, use, hire, lease, operate and dispose of personal property, real property and interests in real property.

(4) To make and enter into all contracts and agreements, in accordance with the provisions of the law, which the board deems necessary or incidental to the furtherance of the marketing program or performance of duties and powers under this chapter. Marketing contracts and the procedures and

decisions related to contracts shall not be subject to competitive bidding requirements of any other statute or other requirements prescribed in The Administrative Code of 1929. The board shall adopt written procurement procedures for all marketing contracts. Procedures shall include:

(i) The method or methods which the board may use to invite proposals for marketing contracts and the manner of notice to be given to prospective contracting parties.

(ii) The minimum qualifications of a prospective contracting party necessary for consideration by the board in marketing contracts.

(iii) The manner in which a contract offer is accepted and a marketing contract is awarded by the board. Notwithstanding any other requirement of this subsection, the board may make sole source procurements when there is only one source for the required service and may make emergency procurements when the board determines in writing that the procedure is necessary due to the urgency of the particular situation.

(5) To receive, account for and disburse all moneys collected pursuant to the issued marketing program.

(6) To prepare a budget for the administration, operating costs and expenses of the program.

(7) To receive and report to the secretary complaints or violations of the marketing program and to assist and cooperate with the secretary in the enforcement thereof.

(8) To establish committees or subcommittees to carry out assigned duties and functions and to designate board members and nonboard members to serve on such committees and subcommittees.

(9) To collect and gather information and data relevant to the proper administration of the marketing program.

(10) To charge fees and to assist the secretary in the imposition of fees and the collection of fees and revenues under this chapter.

(11) To issue an annual report on the operation of the program.

(12) To recommend amendments to the marketing program and amendments to this chapter and regulations issued under this chapter.

(d) Limitation.--No financial obligation shall be incurred by any board beyond the extent to which money shall have been provided under the authority of this chapter. No obligation or liability of any type incurred by a board created pursuant to this chapter shall be an obligation or liability of the Commonwealth, and no board shall have the power to pledge the credit or taxing power of the Commonwealth nor to make its debts payable out of any moneys except those provided for by this chapter.

(e) Dairy industry marketing program.--Any marketing program issued under this chapter specifically for the dairy industry shall provide for the establishment of a board of 21 members who shall include the secretary or his designee and 20 persons appointed by the secretary who are active in the production of milk, including, but not limited to, representatives of milk cooperatives and farming associations, producer-handlers of milk and independent dairy farmers. In addition to the powers and duties contained in subsection (c), the commodity marketing board of the dairy promotion program shall have the power to elect or appoint from the membership of the board a chairman, vice chairman, secretary and treasurer and to hold special

meetings at the request of the chairman or upon request of one-third of the members of the board.

Cross References. Section 4504 is referred to in section 4503 of this title.

§ 4505. Provisions of marketing programs.

Subject to the legislative restrictions and limitations set forth in this chapter, any marketing program issued by the secretary pursuant to this chapter may contain any or all of the following provisions:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for agricultural commodities grown or produced in this Commonwealth. Plans shall be directed toward increasing the sale of such commodities without reference to any particular firm's or individual's brand or trade name. No advertising or sales promotion program shall be issued by the secretary which shall make use of false or unwarranted claims on behalf of any product or disparage the quality, value, sale or use of any other agricultural commodity.

(2) Provisions for the establishment of research programs designed to benefit producers or for agriculture in general.

(3) Provisions establishing or providing authority for establishing an information and service program designed to acquaint producers and other interested persons with quality standards and quality improvements.

(4) Provisions allowing the secretary and the commodity marketing board to cooperate with any other state or Federal agency or other organization whose activities may be deemed beneficial to the purpose of this chapter.

(5) Provision may be made in the program to exempt or allow suitable adjustments or credits in connection with an agricultural commodity on which a mandatory checkoff for market development is required under the authority of any Federal law.

§ 4506. Effecting marketing programs.

(a) Referendum required.--No marketing program or amendment thereto shall become effective unless and until the secretary determines by a referendum whether or not the affected producers assent to the proposed action.

(b) Majority vote.--The secretary shall conduct the referendum among the affected producers, and the affected producers shall be deemed to have assented to the proposed program if, of those voting, a majority by number and a majority by volume assent to the proposed program.

(c) Vote of cooperative association.--In determining whether a marketing program or an amendment to the marketing program has been approved by producers, the secretary shall consider the vote of a cooperative association as the votes of its members, providing the cooperative has first notified its members in writing at least 30 days in advance of its intention to cast a representative vote. The notice shall inform the producer of the right to cast a vote individually and shall include the following wording in boldface type: WARNING - IF YOU DO NOT EXERCISE YOUR RIGHT TO VOTE, YOUR COOPERATIVE HAS THE RIGHT TO VOTE FOR YOU. Each producer shall receive a ballot from the secretary. The ballot shall contain the following wording in boldface type: WARNING - IF YOU DO NOT EXERCISE YOUR RIGHT TO VOTE, YOUR COOPERATIVE HAS THE RIGHT TO VOTE FOR YOU.

If the producer votes individually, the vote shall be deducted from the cooperative representative vote.

(d) Procedure.--Any referendum required under this chapter shall be conducted in accordance with reasonable rules and regulations to be established and promulgated by the secretary.

(e) Pennsylvania Dairy Products Promotion Program.--The secretary may establish without a referendum a Pennsylvania Dairy Products Promotion Program, provided that the program is financed by voluntary contributions credited against assessments payable to the National Dairy Promotion and Research Board pursuant to the Dairy and Tobacco Adjustment Act of 1983 (Public Law 98-180, 97 Stat. 1128). This program shall terminate, unless continued by referendum as provided in this section, not later than six months following the disapproval of the Federal Dairy Promotion Program by a majority of producers voting in a nationwide referendum. The establishment, termination, amendment and management of the Pennsylvania Dairy Products Promotion Program shall, except as provided in this subsection, be conducted pursuant to the provisions of this chapter.

§ 4507. Terminating marketing programs.

Subject to approval of the appropriate commodity marketing board, the secretary shall suspend or terminate any marketing program or any provisions of any marketing program whenever the secretary finds that the provisions or program does not tend to effectuate this chapter within the standards and subject to the limitations and restrictions imposed in this chapter. A suspension or termination shall not be effective until the expiration of the current marketing season. If the secretary finds that the termination of any marketing program is requested in writing by more than 33 1/3% of the affected producers who produce for market more than 50% of the volume of agricultural commodities produced within the designated production area for market, the secretary shall terminate or suspend for a specified period the marketing program or provisions thereof. The termination shall be effective only if announced on or before the date as may be specified in the program. If 10% of the producers in a commodity group of over 2,000 affected producers or 15% of the producers in a commodity group of less than 2,000 affected producers request in writing that a referendum be held on the question of terminating the program, the secretary must announce and conduct a referendum within a reasonable period of time, and, in any case, within one year of the request a marketing program shall be terminated if so voted by a majority of those voting.

§ 4508. Marketing program review and amendments.

(a) Review.--Every five years the secretary shall call a referendum of affected producers within each agricultural commodity group for which a marketing program exists to determine whether or not a majority of those voting still desire a marketing program.

(b) Referendum on amendments.--The secretary shall call for a referendum on amendments to a marketing program within a reasonable period of time, upon the request of the advisory board or with written request of 10% of the producers in a commodity group of over 2,000 affected producers or 15% of the producers in a commodity group of less than 2,000 affected producers. In voting on an amendment to the marketing program, the vote shall be only on the amendment and shall not terminate the program.

§ 4509. Notice of issuance.

Upon the issuance of any marketing program or any suspension, amendment or termination thereof, a notice shall be published

in a newspaper of general circulation published in the capital of the Commonwealth and in such other newspapers as the secretary may prescribe. No program or any suspension, amendment or termination thereof shall become effective until the termination of a period of 20 days from the date of the publication. It shall also be the duty of the secretary to mail a copy of the notice of the issuance to all producers directly affected by the terms of the program, suspension, amendment or termination whose names and addresses may be on file in the office of the secretary and to every person who files in the office of the secretary a written request for notice.

§ 4510. Collection of fees.

(a) General rule.--Any marketing program issued pursuant to this chapter shall provide for the collection of fees to defray the necessary expenses incurred in the formation, issuance, administration and enforcement of the marketing program and shall include the amount, time, method and condition of payment. Fees to be charged shall not be in excess of that which will generate revenues of 5% of the gross market value of production and marketing of the commodity subject to the marketing program. Each and every producer affected by any marketing program issued under this chapter shall pay to the secretary at the time and in the manner as prescribed by the program as adopted the charges provided by this subsection.

(b) Collection by sales agents.--For the convenience of making collections of any producer charges established pursuant to this section, the secretary shall have the authority and may, by regulation, upon the request of a commodity marketing board, require sales agents to collect producer charges upon the sale of the agricultural commodity.

(c) Appropriation.--Any money collected by the secretary under this chapter is hereby specifically appropriated to the department for the administration of the marketing programs for which they were collected. When a marketing program is discontinued, the surplus money shall be made available for the administration of this chapter or of future marketing programs involving the same commodity.

(d) Auditing standards.--Each board shall adopt and publish a set of auditing standards, consistent with generally accepted auditing standards, against which the moneys it collects pursuant to this chapter and expends in accordance with the terms of this chapter can be audited. Each board shall engage an outside auditing firm to conduct annually an audit of its collections and expenditures. An audit under Federal law or regulation may be accepted by the board as long as it meets the minimum standards established under this section.

Cross References. Section 4510 is referred to in section 4504 of this title.

§ 4511. Rules and regulations for enforcement.

The secretary shall, with the advice of the commodity marketing board, make and promulgate rules and regulations as may be necessary to effectuate this chapter and to enforce the provisions of any marketing program, all of which shall have the force and effect of law. The secretary may institute an action at law or in equity and may establish penalties as may appear necessary to enforce compliance with this chapter or any rule or regulation or marketing program committed to the secretary's administration in addition to any other remedy under this chapter.

§ 4512. Advance deposits.

Prior to the issuance of any marketing program, the secretary may require the applicant therefor to deposit an amount as the secretary may deem necessary to defray the expense of preparing and making the marketing program effective. Funds shall be received, deposited and disbursed by the secretary in accordance with the provisions of handling funds in this chapter. The secretary may reimburse the applicant in the amount of the deposit from any funds received through the adopting of a marketing program pursuant to this chapter.

§ 4513. Severability.

The provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

CHAPTER 46
PENNSYLVANIA PREFERRED® TRADEMARK

Subchapter

A. General Provisions
B. Pennsylvania Preferred® Program
C. (Reserved)
D. Military Veterans

Enactment. Chapter 46 was added October 5, 2011, P.L.313, No.78, effective in 60 days.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

4601. Short title of chapter.
4602. Definitions.

Subchapter Heading. The heading of Subchapter A was added July 1, 2019, P.L.255, No.36, effective in 60 days.

§ 4601. Short title of chapter.

This chapter shall be known and may be cited as the Pennsylvania Preferred Act.

§ 4602. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural commodity." Any of the following:

(1) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(2) Livestock and the products thereof.

(3) Ranch-raised furbearing animals and the products thereof.

(4) Poultry and the products of poultry.

(5) Products commonly raised or produced on farms which are:

(i) intended for human consumption; or

(ii) transported or intended to be transported in commerce.

(6) Processed or manufactured products of products commonly raised or produced on farms which are:

(i) intended for human consumption; or

(ii) transported or intended to be transported in commerce.

"Department." The Department of Agriculture of the Commonwealth.

"FDA." The Food and Drug Administration of the Department of Health and Human Services of the United States.

"Licensee." A qualified entity that is subject to a Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark license agreement with the department.

"Organic agricultural commodity." An agricultural commodity that meets the definition of "organically produced" under 7 U.S.C. Ch. 94 (relating to organic certification).

"Pennsylvania Preferred Organic® trademark." One or more trademarks that consist of the phrase "Pennsylvania Preferred Organic" or "PA Preferred Organic," and that may include specific graphic designs or artwork as part of the trademark registration and which is used to identify a Pennsylvania-produced organic agricultural commodity.

"Pennsylvania Preferred® trademark." One or more trademarks that consist of the phrase "Pennsylvania Preferred" or "PA Preferred," and that may include specific graphic designs or artwork as part of the trademark registration.

"Person." An individual, partnership, corporation, association or any other legal entity.

"Qualified entity." A person that produces, processes, prepares, sells, offers for sale, markets, promotes or is involved with any aspect of production, processing, preparation, promotion, marketing, sale or offering for sale of a Pennsylvania-produced agricultural commodity or Pennsylvania-produced organic agricultural commodity.

"Qualified veteran." A qualified entity that:

(1) is a veteran of one or more of the armed forces of the United States, including the United States Army, the United States Navy, the United States Marine Corps, the United States Air Force or the United States Coast Guard; and

(2) has received an honorable discharge or a general discharge under honorable conditions.

"Qualified veteran business entity." A qualified entity to which:

(1) The entity is a corporation, partnership, association or other business organization.

(2) Qualified veterans make up 50% or more of the entity's ownership and a minimum of 50% of the entity's management control.

"USDA." The United States Department of Agriculture.

(Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

2023 Amendment. Act 21 amended the defs. of "licensee" and "qualified entity" and added the defs. of "organic agricultural commodity," "Pennsylvania Preferred Organic® trademark," "qualified veteran" and "qualified veteran business entity."

SUBCHAPTER B
PENNSYLVANIA PREFERRED® PROGRAM

4611. Pennsylvania Preferred® trademark and Pennsylvania Preferred Organic® trademark.
4612. Licensee qualification.
4613. Duties and authority of department.

4614. Trademark license agreement, application and licensure process.
4615. Costs.
4616. Pennsylvania Preferred® Trademark and Pennsylvania Preferred Organic® Trademark Licensing Fund.
4617. Civil penalties.
4618. Injunctive relief.
4619. Rules and regulations.

Subchapter Heading. The heading of Subchapter B was added July 1, 2019, P.L.255, No.36, effective in 60 days.

Cross References. Subchapter B is referred to in section 4631 of this title.

§ 4611. Pennsylvania Preferred® trademark and Pennsylvania Preferred Organic® trademark.

The department may take all actions necessary and appropriate to acquire, create, establish, register, maintain, license, promote and protect a Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark for use on or in connection with the sale, marketing or promotion of a Pennsylvania-produced agricultural commodity or a Pennsylvania-produced organic agricultural commodity.
(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

2019 Amendment. Act 36 renumbered former section 4603 to present section 4611.

§ 4612. Licensee qualification.

A qualified entity shall meet at least one of the following requirements to become a licensee:

(1) Be a person that produces an agricultural commodity or an organic agricultural commodity:

(i) that is entirely harvested from a Pennsylvania location or is grown at a Pennsylvania location for at least 75% of the commodity's production cycle; and

(ii) that, if inspected by the department, the USDA, the FDA or an independent certifying agency approved by the department, is approved by the inspecting authority as meeting all applicable quality, sanitation, safety and labeling standards of that inspecting authority.

(2) Be a person that processes an agricultural commodity or an organic agricultural commodity:

(i) in whole or in part at a facility which is located within this Commonwealth; and

(ii) in whole or in part at a facility, which, if the agricultural commodity or organic agricultural commodity is intended for human consumption, is in compliance with Subchapter B of Chapter 57 (relating to food safety) and all applicable Federal and State food quality, sanitation, safety and labeling standards regulations; and

(iii) which is comprised of at least 75% of a Pennsylvania-produced agricultural commodity or a Pennsylvania-produced organic agricultural commodity.

(3) Be a person that promotes or markets an agricultural commodity or an organic agricultural commodity from a person that meets the provisions of paragraph (1) or (2).

(4) Be a public eating and drinking place licensed under and in compliance with Subchapter A of Chapter 57 (relating to retail food facility safety) or under the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law, which offers a menu item that includes

an agricultural commodity or an organic agricultural commodity from a person that meets the provisions of paragraph (1) or (2).

(5) Be a person approved by the department to use and promote the use of the Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark to constituencies in furthering the purposes of this chapter.

(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

§ 4613. Duties and authority of department.

(a) Department authority to enter into trademark license agreements.--

(1) The department may enter into a trademark license agreement with a qualified entity.

(2) The department shall establish the terms and conditions under which a person may be licensed to use the Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark. Terms and conditions shall require a licensee to produce, process, promote or market an agricultural commodity or an organic agricultural commodity in a manner acceptable to the department which protects the reputation of the Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark.

(3) The department may periodically review a licensing agreement to determine if the terms are being met.

(b) Cooperative activities.--The department may engage in cooperative activities to implement and advance the purposes of this chapter.

(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

2023 Amendment. Act 21 amended subsec. (a)(2).

2019 Amendment. Act 36 renumbered former section 4605 to present section 4613.

§ 4614. Trademark license agreement, application and licensure process.

(a) General rule.--

(1) A qualified entity may apply to be licensed to use the Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark.

(2) An application shall be on a form prepared by the department and shall require identification information and other information the department deems necessary to determine if an applicant is a qualified entity.

(3) The application form shall be provided by the department upon request.

(4) The department shall have the discretion to determine whether a person is a qualified entity for purposes of this chapter.

(5) If the department determines that an applicant is a qualified entity, it shall offer that qualified entity a trademark license agreement.

(6) A trademark license agreement under this chapter shall be effective for one year from the date upon which an agreement is executed and may be renewed. An agreement shall contain provisions allowing for the termination of the license agreement by the department or a licensee upon 60 days' advance written notice to the other party.

(b) Preexisting trademark license agreements.--A trademark license agreement that is in effect prior to the effective date of this section and that authorizes the use of a Pennsylvania Preferred® trademark shall remain in effect until it is

terminated or until the end of the current contract year, whichever occurs first.
(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

2023 Amendment. Act 21 amended subsec. (a)(1).
2019 Amendment. Act 36 renumbered former section 4606 to present section 4614.

§ 4615. Costs.

Reimbursement of costs are as follows:

(1) The department may charge a licensee for costs incurred by the department in connection with that licensee's participation in any activity, trade show, exhibition or other promotional event conducted or facilitated by the department. A charge shall reasonably reflect the costs incurred by the department in facilitating the licensee's participation and may include such costs as proportional shares of event registration fees, equipment rental fees, display area rental fees and related costs.

(2) The department may charge a licensee for costs of Pennsylvania Preferred® or Pennsylvania Preferred Organic® promotional materials provided by the department at the request of the licensee.

(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

2023 Amendment. Act 21 amended par. (2).
2019 Amendment. Act 36 renumbered former section 4607 to present section 4615.
Cross References. Section 4615 is referred to in section 4616 of this title.

§ 4616. Pennsylvania Preferred® Trademark and Pennsylvania Preferred Organic® Trademark Licensing Fund.

(a) Establishment.--There is established in the State Treasury a special fund which shall be an interest-bearing restricted revenue account to be known as the Pennsylvania Preferred® Trademark and Pennsylvania Preferred Organic® Trademark Licensing Fund. The following money shall be deposited into the fund:

(1) Money as is appropriated, given, granted or donated for the purpose established under this chapter by the Federal Government, the Commonwealth or any other government or private agency or person.

(2) Funds derived from the costs established under section 4615 (relating to costs).

(3) Funds derived from civil penalties collected by the department under section 4617 (relating to civil penalties).

(b) Appropriation.--Money in the fund is appropriated on a continuing basis to the department for the purpose of administering this chapter. All interest and earnings received from investment or deposit of the money in the fund shall be paid into the account for the purpose authorized by this section. Any unexpended money and any interest or earnings on the money in the fund may not be transferred or revert to the General Fund, but shall remain in the account to be used by the department for the purpose specified under this section.

(c) Use.--Money deposited in the fund shall be used as follows:

(1) To promote the licensure and use of the Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark with respect to Pennsylvania-produced agricultural

commodities or Pennsylvania-produced organic agricultural commodities.

(2) To promote the Pennsylvania Preferred® trademark and the Pennsylvania Preferred Organic® trademark as an identification of origin and quality.

(3) To promote Pennsylvania-produced agricultural commodities with respect to which the Pennsylvania Preferred® trademark is used and increase the number of qualified entities which use the Pennsylvania Preferred® trademark.

(3.1) To promote Pennsylvania-produced organic agricultural commodities with respect to which the Pennsylvania Preferred Organic® trademark is used and increase the number of qualified entities that use the Pennsylvania Preferred Organic® trademark.

(4) To pay costs associated with monitoring the use of the Pennsylvania Preferred® trademark and Pennsylvania Preferred Organic® trademark, prohibiting the unlawful or unauthorized use of the trademarks and enforcing rights in the trademarks.

(4.1) To promote participation under this chapter by qualified veterans and qualified veteran business entities.

(4.2) To promote, encourage and facilitate cooperation by the department with military, government or private sector marketing efforts that identify, emphasize and encourage the production and marketing of Pennsylvania-produced agricultural commodities or Pennsylvania-produced organic agricultural commodities by qualified veterans and qualified veteran business entities.

(5) To otherwise fund the department's costs in administering and enforcing this chapter.

(d) Definitions.--(Deleted by amendment).

(e) Grants.--The department may use money deposited into the Pennsylvania Preferred® Trademark and Pennsylvania Preferred Organic® Trademark Licensing Fund to promote one or more of the funding objectives under subsection (c) through the awarding of grants.

(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

§ 4617. Civil penalties.

In addition to any other remedy available at law or in equity for a violation of a provision of this chapter or a trademark license agreement established under this chapter, the department may assess a civil penalty upon the person responsible for the violation. The civil penalty assessed shall not exceed $10,000 and shall be payable to the Commonwealth and collectible in any manner provided under law for the collection of debt.

(July 1, 2019, P.L.255, No.36, eff. 60 days)

2019 Amendment. Act 36 renumbered former section 4609 to present section 4617.

Cross References. Section 4617 is referred to in sections 4616, 4618 of this title.

§ 4618. Injunctive relief.

In addition to any other remedies provided for under this chapter, the department or the Attorney General, at the request of the department, may initiate, in the court of common pleas in Dauphin County, an action in equity for an injunction to restrain violations of this chapter or a trademark license agreement. In the proceeding, the court shall, upon motion of the Commonwealth, issue a preliminary injunction if it finds that the defendant is engaging in unlawful conduct under this chapter or is engaging in conduct which is causing immediate

or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with the proceedings. In addition to an injunction, the court, in equity proceedings, may levy civil penalties as provided under section 4617 (relating to civil penalties).
(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

§ 4619. Rules and regulations.

The department shall promulgate rules and regulations necessary to promote the efficient, uniform and Statewide administration of this chapter. For two years from the effective date of this section, the department shall have the power and authority to promulgate, adopt and use guidelines to implement the provisions of this chapter. The guidelines shall be published in the Pennsylvania Bulletin but shall not be subject to review under section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. All guidelines shall expire no later than December 31, 2025, and shall be replaced by regulations which shall have been promulgated, adopted and published as provided under law.
(July 1, 2019, P.L.255, No.36, eff. 60 days; Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

SUBCHAPTER C
(Reserved)

Enactment. Subchapter C (Reserved) was added July 1, 2019, P.L.255, No.36, effective in 60 days.

SUBCHAPTER D
MILITARY VETERANS

Sec.
4631. Purpose.
4632. Definitions (Repealed).
4633. Qualified veterans and qualified veteran business entities.

Enactment. Subchapter D was added July 1, 2019, P.L.255, No.36, effective in 60 days.

§ 4631. Purpose.

The purpose of this subchapter is to:

(1) Benefit qualified veterans and qualified veteran business entities that are licensed by the department under Subchapter B (relating to Pennsylvania Preferred® Program) by allowing and encouraging the use of other trademarks or descriptive labels, packaging or advertisement information to inform consumers that agricultural commodities or organic agricultural commodities were produced by veterans of the armed forces of the United States.

(2) Encourage qualified veterans and qualified veteran business entities to avail themselves of marketing opportunities for Pennsylvania-produced agricultural commodities or Pennsylvania-produced organic agricultural commodities through licensure under Subchapter B and partnership with organizations such as the Farmer Veteran

Coalition Homegrown By Heroes program and similar programs intended to encourage veterans to farm or to otherwise benefit farmers who are veterans.

(Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

§ 4632. Definitions (Repealed).

2023 Repeal. Section 4632 was repealed November 1, 2023, P.L.148, No.21, effective in 60 days.

§ 4633. Qualified veterans and qualified veteran business entities.

(a) Encouragement of participation.--The department shall promote participation under this subchapter by qualified veterans and qualified veteran business entities and shall conduct outreach and education efforts to encourage and facilitate veteran participation.

(b) Coordination of effort.--The department shall cooperate with military, government or private sector marketing efforts that identify, emphasize and encourage the production and marketing of Pennsylvania-produced agricultural commodities or Pennsylvania-produced organic agricultural commodities by qualified veterans and qualified veteran business entities and may allow the use of the Pennsylvania Preferred® trademark or Pennsylvania Preferred Organic® trademark in a cooperative effort.

(Nov. 1, 2023, P.L.148, No.21, eff. 60 days)

2023 Amendment. Act 21 amended subsec. (b).

CHAPTER 47
CROP INSURANCE

Sec.

4701. Short title of chapter.
4702. Purpose of chapter.
4703. Definitions.
4704. Establishment of program.
4705. Powers and duties of department.
4706. Crop insurance financial assistance.
4707. Funding.
4708. Report.

Enactment. Chapter 47 was added November 30, 2004, P.L.1658, No.208, effective in 60 days.

§ 4701. Short title of chapter.

This chapter shall be known and may be cited as the Crop Insurance Act.

§ 4702. Purpose of chapter.

The purpose of this chapter is to establish a program within the department to encourage producers of agricultural commodities to purchase Federal crop insurance and adopt risk management practices and to provide crop insurance financial assistance, subject to the availability of funding, to eligible producers for crop insurance premium costs.

§ 4703. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural commodity." Any of the following, transported or intended to be transported in commerce:

(1) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products.

(2) Agricultural crops.
(3) Livestock and products of livestock.
(4) Poultry and products of poultry.
(5) Ranch-raised furbearing animals and the products of ranch-raised furbearing animals.
(6) The products of bee raising.
(7) Forestry and forestry products.
(8) Any products raised or produced on farms intended for on farm or human consumption and the processed or manufactured products of such products intended for human consumption.

"Eligible producer." A producer who has applied for and has received Federal crop insurance for the crop year for which crop insurance financial assistance is sought.

"Producer." Any person engaged within this Commonwealth in the business of producing an agricultural commodity or causing agricultural commodities to be produced.

§ 4704. Establishment of program.

The department shall establish a program to educate producers on the benefits of Federal crop insurance and risk management practices. The program shall promote the purchase of Federal crop insurance and may provide financial assistance to eligible producers to partially offset Federal crop insurance premiums. The provision of financial assistance shall be subject to the availability of funding.

§ 4705. Powers and duties of department.

(a) Administration of chapter.--Subject to the conditions contained in this chapter, the department shall administer this chapter and shall exercise all administrative powers necessary to effectuate the purposes of this chapter, including, but not limited to, drafting and entering into agreements necessary to implement this chapter, establishing eligibility criteria for crop insurance financial assistance and developing an application and application procedure for crop insurance financial assistance, including time frames for the submission, review and approval of applications.

(b) Drafting and entering agreements.--The department is authorized to draft and enter into agreements with Federal agencies, other Commonwealth agencies and private entities as necessary to implement this chapter.

(c) Regulations.--The department is authorized to promulgate any regulations that may be necessary to implement this chapter.

§ 4706. Crop insurance financial assistance.

The department may provide crop insurance financial assistance to eligible producers for Federal crop insurance in an amount up to 10% of the cost of the insurance premiums in years in which funds are appropriated or made available to the department. If sufficient funds are not available to provide for up to 10% of the cost of the insurance premiums, the department shall prorate the available funds among all the producers of agricultural commodities who applied for and received Federal crop insurance for that crop year.

§ 4707. Funding.

The department is authorized to use funds specifically appropriated by the General Assembly for the purposes of this chapter and any funds, contributions or payments which may be made available to the department by another State agency, the Federal Government or any public or private source for the purpose of implementing this chapter.

§ 4708. Report.

The department shall submit annually to the chairman and minority chairman of the Agriculture and Rural Affairs Committee

of the Senate and the chairman and minority chairman of the Agriculture and Rural Affairs Committee of the House of Representatives a report that provides details of the department's expenditures, including administrative expenditures, under this chapter.

CHAPTER 48
AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Sec.

4801. Short title of chapter.
4802. Definitions.
4803. Establishment.
4804. Purpose.
4805. Agricultural Business Development Center Advisory Committee.
4806. Grant programs.
4807. Limitation on grants.
4808. Disposition of grants.
4809. Regulations.
4810. Agricultural Business Development Center Fund.

Enactment. Chapter 48 was added July 1, 2019, P.L.279, No.40, effective in 60 days.

§ 4801. Short title of chapter.

This chapter shall be known and may be cited as the Agricultural Business Development Center Act.

§ 4802. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advisory committee." The Agricultural Business Development Center Advisory Committee established under section 4805 (relating to Agricultural Business Development Center Advisory Committee).

"Center." The Agricultural Business Development Center established under section 4803 (relating to establishment).

"Fund." The Agricultural Business Development Center Fund established under section 4810 (relating to Agricultural Business Development Center Fund).

§ 4803. Establishment.

The Agricultural Business Development Center is established in the department, which shall staff and operate the center.

Cross References. Section 4803 is referred to in section 4802 of this title.

§ 4804. Purpose.

The department shall operate the center for the following purposes:

(1) To provide farmers and prospective farmers a resource and reference center for creating business plans and management strategies to enhance the long-term economic viability of a farm.

(2) To provide farmers a resource and reference center for creating plans for the transition of ownership and operation of a farm to new owners and operators.

(3) To provide farmers a resource and reference center for creating plans for transfer of ownership and operation of a farm within the farmer's family.

(4) To provide a resource and reference center for helping a farmer diversify an existing agricultural operation

to new or different forms of agricultural production, including on-farm value-added processing and agritourism.

(5) To provide persons who own or operate farms that are subject to perpetual agricultural conservation easements acquired under the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, resources to help maintain the long-term economic viability of the farms and protect the investment of public funds in preserving the farms for agricultural production.

(6) To provide a resource and reference center for persons planning a farm expansion or seeking financing for farm growth.

(7) To help identify and build teams of planning facilitators, accountants, financial planners, lenders, marketers, conservation and nutrient management planners and veterinarians who can provide expertise.

(8) To devise, award and administer grants to farmers, prospective farmers and others.

§ 4805. Agricultural Business Development Center Advisory Committee.

(a) Establishment.--There is established the Agricultural Business Development Center Advisory Committee to advise the secretary with respect to the secretary's responsibilities under this chapter.

(b) Membership.--The advisory committee shall consist of the following members:

(1) The secretary, who shall serve as chairperson.

(2) The secretary of the Department of Community and Economic Development or a designee.

(3) The dean of the College of Agricultural Sciences at The Pennsylvania State University or a designee.

(4) One representative selected annually from each of the following organizations:

(i) The Pennsylvania Bankers Association.

(ii) A farm credit association servicing clients in this Commonwealth.

(iii) The Pennsylvania Association of Conservation Districts.

(5) The following individuals appointed by the secretary:

(i) A licensed veterinarian whose practice includes food animals.

(ii) A person certified to create nutrient management plans.

(iii) A certified public accountant.

(iv) A financial planner.

(v) An attorney.

(vi) A farmer who has experience with a farm transition or diversification of the agricultural production of a farm.

(c) Terms.--

(1) The term of office for each advisory committee member under subsection (b)(5) shall be three years, except that the initial terms shall be staggered as follows:

(i) Two members shall each serve a term of one year.

(ii) Two members shall each serve a term of two years.

(iii) Two members shall each serve a term of three years.

(2) Advisory committee members may be appointed to successive terms at the discretion of the secretary, except that no member may serve more than two three-year terms.

Vacancies shall be filled in the same manner as the original appointments.

(d) Duties.--The advisory committee shall meet as often as necessary to advise the secretary on satisfying the purpose of this chapter and establishing and awarding grants under this chapter.

(e) Expenses.--Advisory committee members shall serve without compensation but shall be entitled to expenses which are reasonable and necessary in the performance of their duties.

Cross References. Section 4805 is referred to in section 4802 of this title.

§ 4806. Grant programs.

(a) Authorization.--The department may establish programs to award grants for the purposes described in this chapter.

(b) Grant program standards and requirements.--The following shall apply:

(1) The department shall establish grant program standards and requirements for a grant program under this chapter and shall transmit notice of the grant program standards and requirements to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(2) Grant program standards and requirements shall do the following:

(i) Establish eligibility standards for applicants.

(ii) Describe the objectives of the grant program, which objectives shall be consistent with this chapter.

(iii) Establish caps, limits and restrictions with respect to grant amounts.

(iv) Establish an application process and timetable.

(v) Present the criteria under which grant applications shall be evaluated by the department.

(vi) Establish a timetable within which the department shall award or disapprove a complete grant application.

(vii) Establish procedures by which the department shall verify expenditures of grant money by a grant recipient.

§ 4807. Limitation on grants.

(a) Available funding.--Grants shall be awarded to the extent money is made available by the General Assembly.

(b) Matching.--Grant amounts shall be limited to 75% of project costs. In-kind support shall not be counted toward an applicant's matching contribution.

(c) Conditions.--The secretary may approve a grant in less than the requested amount. The secretary may also impose restrictions or special conditions upon the issuance of the grant.

§ 4808. Disposition of grants.

(a) Written agreement.--The department may require a written agreement describing the terms and conditions of the grant.

(b) Return of grant money.--The department may establish criteria under which the secretary may demand the return of all or a portion of the grant money.

§ 4809. Regulations.

The department may promulgate rules and regulations to administer and enforce this chapter.

§ 4810. Agricultural Business Development Center Fund.

(a) Establishment.--The Agricultural Business Development Center Fund is established in the State Treasury as a special fund which shall be an interest-bearing restricted revenue

account. Money collected by the department under this chapter or appropriated, given, granted or donated for the purpose established under this chapter by the Commonwealth or any other government or private agency or person shall be deposited into the fund.

(b) Appropriation.--Money in the fund is appropriated on a continuing basis to the department for the purpose of administering this chapter. All interest and earnings received from investments or deposits of the money in the fund shall be paid into the account for the purpose authorized by this section. Unexpended money and interest or earnings on the money in the fund may not be transferred or revert to the General Fund but shall remain in the account to be used by the department for the purpose specified under this section.

Cross References. Section 4810 is referred to in section 4802 of this title.

PART VII
QUALITY AND LABELING

Chapter

51. Commercial Feed
57. Food Protection
59. Organic Foods (Repealed)
61. Maple Products (Repealed)
65. Food Employee Certification
67. Fertilizer (Repealed)
68. Fertilizer
69. Soil and Plant Amendment
71. Seed

Enactment. Part VII was added December 12, 1994, P.L.903, No.131, effective in 60 days.

CHAPTER 51
COMMERCIAL FEED

Sec.

5101. Short title of chapter.
5102. Definitions.
5103. Licensing.
5104. Labeling.
5105. Inspection fees.
5106. Adulteration.
5107. Misbranding.
5108. Inspection, sampling and analysis.
5109. Rules and regulations.
5110. Detained commercial feeds.
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5113. Civil remedy.
5114. Publications.
5115. Disposition of funds.

Enactment. Chapter 51 was added December 12, 1994, P.L.903, No.131, effective in 60 days.

§ 5101. Short title of chapter.

This chapter shall be known and may be cited as the Commercial Feed Act.

§ 5102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Brand name." Any word, name, symbol or device or any combination thereof identifying the commercial feed of a distributor and distinguishing it from that of others.

"Commercial feed." All materials distributed or intended to be distributed for use as feed or for mixing in feed. The term does not include unmixed whole seeds and physically altered entire unmixed seeds when the seeds are not adulterated within the meaning of section 5106 (relating to adulteration). The department by regulation may exempt from this definition or specific provisions of this chapter specific commodities, individual chemical compounds or substances when the commodities, compounds or substances are not mixed with other materials and are not adulterated within the meaning of section 5106.

"Contract feed." Commercial feed provided to a contract feeder.

"Contract feeder." A person who as an independent contractor feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished or otherwise provided to the person and whereby the person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

"Customer-formula feed." Commercial feed consisting of a mixture of commercial feeds or feed ingredients or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

"Distribute." To offer for sale, sell or barter commercial feed or customer-formula feeds or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder.

"Distributor." Any person who distributes commercial feed or customer-formula feed.

"Drug." Any article intended for use in the prevention, diagnosis, cure, mitigation or treatment of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

"Exempted material." Any commodity, individual chemical compound or substance specifically exempted from the definition of commercial feed.

"Facility." Each separate mill or plant, fixed or mobile, or distributor of commercial feed or customer-formula feed.

"Feed ingredient." Each of the constituent materials making up a commercial feed.

"Guarantor." The person, including a manufacturer or distributor, whose name appears on the label of commercial feed.

"Label." A display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

"Labeling." All labels and other written, printed or graphic matter:

(1) appearing upon a commercial feed or any of its containers or wrappers; or

(2) used in promoting the distribution of commercial feed.

"Manufacture." To grind, mix, blend, repackage or further process a commercial feed for distribution.

"Mineral feed." A substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

"Official sample." Any sample of feed taken by the department in accordance with section 5108 (relating to inspection, sampling and analysis).

"Percentage." Percentage by weight.

"Pet." Any domesticated animal normally maintained in or near the household of the owner thereof.

"Pet food." Any commercial feed prepared and distributed for consumption by pets.

"Portable grinding mill." An apparatus or machine, so constructed as to be moved from place to place and not located in a permanent place, used and employed as a food or feed grinder or mill to manufacture commercial feed.

"Product name." The name of the commercial feed which identifies it as to kind, class or specific use.

"Repackage." To change the container, wrapper or labeling of any commercial feed package to further its distribution from the original place of manufacture.

"Sale." Includes exchange.

"Ton." A net weight of 2,000 pounds avoirdupois.

§ 5103. Licensing.

(a) General rule.--Every person engaged in the manufacture of commercial feed or customer-formula feed to be distributed in this Commonwealth and each guarantor of the feed shall, on January 1 of each year or prior to manufacture or distribution of the feed, obtain a license for each manufacturing facility located in this Commonwealth and for each guarantor by completing a form furnished by the department and paying a $25 application fee. Upon approval by the department, a copy of the license shall be furnished to the applicant and, in the case of manufacturers, displayed in the facility. The department may require an applicant for a license or a current licensee to submit any labeling the applicant is using or intends to use for commercial feed.

(b) Denial of license.--The department may refuse the license of any person not in compliance with the provisions of this chapter or cancel the license of any person found not in compliance with any provision of this chapter. A license may not be refused or canceled until the applicant or licensee has been given an opportunity to be heard before the department.

Cross References. Section 5103 is referred to in section 4114 of this title.

§ 5104. Labeling.

(a) Commercial feed labeling.--Any commercial feed distributed in this Commonwealth shall be accompanied by a legible label bearing the following information:

(1) The net weight.

(2) The product name and brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis stated in such terms as the secretary by regulation determines is required to advise the user of the composition of the feed to support the claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods from generally recognized sources such as the methods published by the Association of Official Analytical Chemists.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed. The department

may by regulation permit the use of a collective term for a group of ingredients which perform a similar function or it may exempt such commercial feeds or any group thereof from this requirement of an ingredient statement if it finds that such statement is not required in the interest of consumers.

(5) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the department may require by regulation as necessary for their safe and effective use.

(7) Such warning or caution statements as the department by regulation determines are necessary for the safe and effective use of the commercial feed.

(b) Customer-formula feed labeling.--Customer-formula feed shall be accompanied by a label, invoice, delivery slip or other shipping document bearing the following information:

(1) The name and address of the manufacturer.

(2) The name and address of the purchaser.

(3) The date of delivery.

(4) The product name and brand name, if any, the net weight of each commercial feed used in the mixture and the net weight of each other ingredient used.

(5) Adequate directions for use of all customer-formula feeds containing drugs and for such other feeds as the department may require by regulation as necessary for their safe and effective use.

(6) Warning or caution statements as the department by regulation determines are necessary for the safe and effective use of the customer-formula feed.

Cross References. Section 5104 is referred to in section 5107 of this title.

§ 5105. Inspection fees.

(a) Imposition.--There shall be paid to the department for all commercial feeds distributed in this Commonwealth an inspection fee at the rate of 10¢ per ton annually. Customer-formula feeds and contract feeds are exempted if the inspection fee is paid on the commercial feeds which are used as ingredients therein. Commercial feeds which are distributed to manufacturers and used as ingredients in the manufacture of commercial feeds other than customer-formula feeds and contract feeds are exempted from the inspection fee, but in no case shall the inspection fee paid annually amount to less than $25. The department, having determined after a public hearing following notice to the licensees that moneys derived from the license and inspection fees are either greater or less than that required to administer this chapter, may by regulation reduce or increase the inspection fee so as to maintain revenues sufficient to administer this chapter, but the inspection fee shall not be changed by more than 2¢ in one year, and the inspection fee shall not exceed 20¢ per ton.

(b) Annual statement and records.--Except as otherwise provided, every guarantor who distributes commercial feed in this Commonwealth shall:

(1) File not later than February 15 of each year an annual statement, under oath, setting forth the number of net tons of commercial feeds distributed in this Commonwealth during the preceding calendar year. Upon filing the statement, the guarantor shall pay the inspection fee at the rate stated in subsection (a) or at the rate established by

the department by regulation promulgated under subsection (a). When more than one guarantor is involved in the distribution of commercial feed, the guarantor who distributed the feed last is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior guarantor of the feed or feed ingredient. Inspection fees which are due and owing and have not been remitted to the Commonwealth by the due date shall have a penalty fee of 10% or a minimum of $25 added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commonwealth from taking other actions as provided in this chapter.

(2) Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feeds distributed in this Commonwealth. The department may examine these records to verify statements of tonnage.

(c) Cancellation of license.--Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section shall constitute sufficient cause for the cancellation of the license.

§ 5106. Adulteration.

No person shall distribute adulterated feed. A commercial feed, customer-formula feed or exempted material shall be deemed to be adulterated if it meets any of the following criteria:

(1) It bears or contains any poisonous or deleterious substance which may render it injurious to the health of humans or animals. If the substance is not an added substance, the commercial feed shall not be considered adulterated under this paragraph if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) It bears or contains any added poisonous, added deleterious or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) other than a pesticide chemical in or on a raw agricultural commodity or a food additive.

(3) It is, bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act.

(4) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if the residue has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity. If the feeding of the processed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act, it shall be deemed adulterated.

(5) It is, bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(6) It is, bears or contains any new animal drug which is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act.

(7) Any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor.

(8) Its composition or quality falls below or differs from that which it is purported or represented to possess by its labeling.

(9) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the department to assure that the drug meets the requirements of this chapter as to safety, identity and strength, quality and purity characteristics which the drug purports or is represented to possess. In promulgating these regulations, the department shall adopt the current good manufacturing practice regulations for Type A medicated articles and Type B and Type C medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act unless it determines that they are not appropriate to the conditions which exist in this Commonwealth.

(10) It contains viable weed seeds in amounts exceeding the limits which the department establishes by regulation.

Cross References. Section 5106 is referred to in section 5102 of this title.

§ 5107. Misbranding.

No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded if it meets any of the following criteria:

(1) Its labeling is false or misleading in any particular.

(2) It is distributed under the name of another feed.

(3) It is not labeled as required in section 5104 (relating to labeling) and in regulations prescribed under this chapter.

(4) It purports to be or is represented as a feed ingredient or it purports to contain or is represented as containing a feed ingredient unless the feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In adopting such regulation, the department shall give due regard to commonly accepted definitions such as those issued by the Association of American Feed Control Officials.

(5) Any word, statement or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

§ 5108. Inspection, sampling and analysis.

(a) Inspection.--For purposes of enforcement of this chapter, the department may inspect during business hours any facility, warehouse or establishment in which commercial feeds are manufactured, processed, packed or held for distribution. It may also enter and inspect any vehicle being used to

transport or hold feeds. The inspector shall give written notice to the owner or person in charge of the facility, warehouse, establishment or vehicle prior to inspection. The inspection may include the verification of only those records and production and control procedures as may be necessary to determine compliance with this chapter. A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified. If the employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the employee shall give to the owner, operators or agent in charge a receipt describing the samples obtained.

(b) Warrant.--If the owner of any factory, warehouse or establishment described in subsection (a) or his agent refuses to permit the department to inspect in accordance with subsection (a), the department may obtain from any court of competent jurisdiction a warrant directing the owner or his agent to submit the premises described in the warrant to inspection.

(c) Samples and records.--For the purpose of the enforcement of this chapter, the department may enter upon any public or private premises, including any vehicle of transport, during business hours to have access to and to obtain samples, including exempted materials and labeling for commercial feeds, and to examine and copy records relating to the manufacture and distribution of commercial feeds and exempted materials.

(d) Sampling and analysis methods.--Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or in accordance with other generally recognized methods.

(e) Disposition of official samples.--In determining for administrative purposes whether a commercial feed is deficient in any component, the department shall be guided solely by the official sample obtained and analyzed as provided for in subsection (d). The result of analyses of official samples shall be forwarded by the department to the guarantor. Upon request, the department shall furnish to the guarantor a portion of the sample concerned. The request must be made within 30 days from the date of the official report.

Cross References. Section 5108 is referred to in section 5102 of this title.

§ 5109. Rules and regulations.

The department is charged with the enforcement of this chapter and after due publicity and due public hearing may promulgate and adopt such reasonable rules and regulations as may be necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

§ 5110. Detained commercial feeds.

(a) "Withdrawal from distribution" orders.--When the department has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order warning the distributor

not to dispose of the lot of feed in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with. If compliance is not obtained within 30 days, the department may begin or upon request of the distributor shall begin proceedings for condemnation.

(b) Condemnation and confiscation.--Any lot of commercial feed not in compliance with the provisions and regulations shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of this Commonwealth. In no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

§ 5111. Criminal penalties.

(a) Conviction.--Any person who violates any of the provisions of this chapter or the rules and regulations issued thereunder or who impedes, obstructs, hinders or otherwise prevents or attempts to prevent the department in performance of its duty in connection with the provisions of this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than $50 nor more than $100 for the first violation and not less than $500 nor more than $1,000 for a subsequent violation in any one year. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the secretary shall be accepted as prima facie evidence of the composition.

(b) Minor violations.--Nothing in this chapter shall be construed as requiring the department to report a violation and to institute seizure proceedings as a result of minor violations of the chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(c) District attorney.--It is the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the person to present his view to the department.

(d) Trade secrets.--Any person who uses to his own advantage or reveals to anyone other than the department or to the courts when relevant in any judicial proceeding any information acquired under the authority of this chapter concerning any method, records, formulations or processes which as a trade secret is entitled to protection commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 or to imprisonment for not less than one year, or both. This prohibition shall not be deemed as prohibiting the department from exchanging information of a regulatory nature with duly appointed officials of the Federal Government or of other states who are similarly prohibited by law from revealing this information.

§ 5112. Civil penalties.

In addition to any other remedy available at law or in equity for a violation of this chapter, the department may assess a

civil penalty upon a person for a violation of this chapter. The department shall give notice to the person and shall provide an opportunity for a hearing. The hearing shall be conducted in accordance with Title 2 (relating to administrative law and procedure). The civil penalty assessed shall not exceed $2,500. The civil penalty shall be payable to the department and shall be collectible in any manner provided by law for the collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay it after demand, the amount of the civil penalty, together with interest and any other costs that may accrue, shall be a lien in favor of the Commonwealth upon the real and personal property of the person after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. It is the duty of each prothonotary, upon receipt of the certified copy of the lien, to enter and docket the lien in the records of his office and to index the lien as judgments are indexed without requiring the payment of costs as a condition precedent to entry.

§ 5113. Civil remedy.

In addition to any other remedies provided for in this chapter, the Attorney General, at the request of the secretary, may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business an action in equity for an injunction to restrain any and all violations of this chapter or the regulations promulgated under this chapter or any order issued pursuant to this chapter from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall upon motion of the Commonwealth issue a preliminary injunction if it finds that the defendant is engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with these proceedings. In addition to an injunction, the court may levy civil penalties as provided by this chapter.

§ 5114. Publications.

The department shall publish at least annually, in such form as it deems proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold in this Commonwealth as compared with the analyses guaranteed on the label. The information concerning production and use of commercial feeds shall not disclose the operations of any person.

§ 5115. Disposition of funds.

Moneys received from license fees, inspection fees, fines and civil penalties shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for administering the provisions of this chapter.

CHAPTER 57
FOOD PROTECTION

Subchapter

A. Retail Food Facility Safety
B. Food Safety
C. Milk Sell-by Date and Best-by Date Labeling

Enactment. Chapter 57 was added December 12, 1994, P.L.903, No.131, effective in 60 days, unless otherwise noted.

Special Provisions in Appendix. See section 7 of Act 106 of 2010 in the appendix to this title for special provisions relating to continuation of prior rules, regulations and standards.

SUBCHAPTER A
RETAIL FOOD FACILITY SAFETY

Sec.

5701. Short title of subchapter.
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5703. License required.
5704. Inspection, sampling and analysis.
5705. (Reserved).
5706. (Reserved).
5707. Powers of department.
5708. Infectious persons.
5709. Linens, equipment and utensils.
5710. Retail food facility and employee cleanliness.
5711. Toilets, sinks and drains.
5712. Applicability.
5713. School cafeterias and organized camps.
5714. Penalties.

Enactment. Subchapter A was added November 23, 2010, P.L.1039, No.106, effective in 60 days.

Cross References. Subchapter A is referred to in sections 4612, 5733, 5737, 6503, 6504, 6508 of this title.

§ 5701. Short title of subchapter.

This subchapter shall be known and may be cited as the Retail Food Facility Safety Act.

§ 5702. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bed and breakfast homestead or inn." A private residence which contains ten or fewer bedrooms used for providing overnight accommodations to the public and in which breakfast is the only meal served and is included in the charge for the room.

"Employee." The license holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement or other person working in a retail food facility.

"Food employee." An individual working with unpackaged food, food equipment or utensils or food contact surfaces.

"License." A grant to a proprietor to operate a retail food facility.

"Licensor." Any of the following:

(1) The county department of health or joint-county department of health whenever a retail food facility is located in a political subdivision under the jurisdiction of a county department of health or joint-county department of health.

(2) The health authorities of cities, boroughs, incorporated towns and first class townships whenever a retail food facility is located in a city, borough, incorporated town or first class township not under the

jurisdiction of a county department of health or joint-county department of health.

(3) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under this subchapter whenever a retail food facility is located in a second class township or second class township which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

(4) The Department of Agriculture whenever a retail food facility is located in any other area of this Commonwealth.

"Organized camp." A combination of programs and facilities established for the primary purpose of providing an outdoor group living experience for children, youth and adults, with social, recreational and educational objectives, and operated and used for five or more consecutive days during one or more seasons of the year.

"Person in charge." A person designated by a retail food facility operator to be present at a retail food facility and responsible for the operation of the retail food facility at the time of inspection.

"Potentially hazardous food." The term shall have the same meaning as defined in the 2009 edition of the Food Code published by the Department of Health and Human Services, Food and Drug Administration, or any successor document approved by regulation of the department.

"Proprietor." A person, partnership, association or corporation conducting or operating a retail food facility within this Commonwealth.

"Public eating or drinking place." A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

"Raw agricultural commodity." As defined under section 5722 (relating to definitions).

"Retail food establishment." An establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

"Retail food facility." A public eating or drinking place or a retail food establishment.

Cross References. Section 5702 is referred to in sections 5722, 5742, 6502 of this title.

§ 5703. License required.

(a) Unlawful conduct.--Except as provided in subsection (b), it shall be unlawful for any proprietor to conduct or operate a retail food facility without first obtaining a license for each retail food facility as provided in this subchapter.

(b) Exempt retail food facilities.--

(1) A licensor may exempt the following retail food facilities from the license requirements of this section:

(i) A food bank owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(ii) A soup kitchen owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(iii) A retail food facility that operates on no more than three days each calendar year.

(iv) A school cafeteria.

(v) A retail food facility that is owned by a charitable nonprofit entity and that is one or more of the following:

(A) Managed by an organization which is established to promote and encourage participation or support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis. This subparagraph does not apply to organized camps.

(B) Offers only foods that are nonpotentially hazardous foods or beverages.

(vi) A retail food facility in which food or beverages are sold only through a vending machine.

(vii) A retail food facility which is owned by a church, association of churches or other religious order, body or institution which:

(A) Qualifies for exemption from taxation under section 501(c)(3) or (d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

(B) Is not subject to unrelated business income taxation under sections 511, 512 or 513 of the Internal Revenue Code of 1986 for activities undertaken under this chapter.

If the licensor is the department, the exemption shall be accomplished by order of the secretary and published in the Pennsylvania Bulletin. If the licensor is an entity other than the department, the exemption shall be accomplished by order of the local government unit or units having jurisdiction over the licensor. A retail food facility that is exempted from the license requirements under this section shall remain subject to inspection and all other provisions of this subchapter.

(2) A licensor shall exempt the following retail food facilities from the license requirements of this section:

(i) A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold.

(ii) A retail food facility that sells only raw agricultural commodities.

(iii) A retail food facility that is in compliance with the act of July 20, 1974 (P.L.537, No.184), referred to as the Honey Sale and Labeling Act, and in which 100% of the regulated products offered for human consumption are produced or processed on the farm on which the retail food facility is located.

A retail food facility that is exempted from the license requirements under this section shall remain subject to inspection and all other provisions of this subchapter.

(c) Issuance of license.--A retail food facility license shall be issued by the licensor having jurisdiction. A license shall specify the date of expiration, the period for which the license is valid, the name of the licensee and the place licensed. Licenses shall be conspicuously displayed at all times in the place thereby licensed. Licenses shall not be transferable.

(d) Application requirement.--Any person owning or operating or desiring to operate a retail food facility within this Commonwealth shall make application for a license to the

licensor on forms furnished by the licensor. The forms shall, at a minimum, set forth such information as the department may require and any additional information a licensor that is not the department may require under the authority of the act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, or the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law. Application forms shall include the name and address of the applicant, together with all the other information deemed necessary to identify the applicant, provide contact information for the applicant, identify the location of the retail food facility that is the subject to the application and facilitate the licensor's processing of the application.

(e) Inspection.--

(1) No license shall be issued until inspection of the retail food facility has been made by the licensor and the retail food facility meets the requirements of both this subchapter and one of the following:

(i) The rules and regulations of the department.

(ii) The rules and regulations adopted under the authority of the First Class City Home Rule Act or the Local Health Administration Law.

(2) Rules and regulations adopted by a licensor who is not the department shall meet and shall not exceed the requirements of this subchapter and the rules and regulations of the department.

(f) Reports.--If the licensor is an entity other than the department, the licensor shall provide the department a copy of any inspection report resulting from any inspection conducted under authority of this subchapter within 30 days of the inspection date. This copy may be sent by electronic methods, as approved by the department. The department may, by regulation, require that inspection reports be submitted in a specific electronic format.

(g) Term of license.--

(1) Except as provided in paragraph (2), licenses shall expire on the day after the original license anniversary date at intervals of one year, or for any other license period that is established by the department through regulation and that uses risk-based factors identified in the current edition of the Food Code, published by the United States Department of Health, Food and Drug Administration, as a basis for determining the appropriate license interval. An application for renewal shall be made one month before the expiration of an existing license. A license granted under the provisions of this subchapter shall be renewed if the most recent inspection by the licensor was conducted within the preceding license period and determined that requirements specified in this chapter with respect to the retail food facility were met.

(2) A temporary license for a retail food facility that operates on no more than 14 days in one calendar year or for a retail food facility operating at a fair, festival or similar temporary event shall be granted with respect to the calendar year in which it is issued if the retail food facility meets the requirements of this subchapter.

(h) Sales and use tax license.--No license shall be issued until the proprietor exhibits proof that the proprietor has applied for or received a sales and use tax license or exemption certificate from the Department of Revenue.

(i) Denial or revocation of license.--

(1) A licensor shall state in writing to the proprietor the reason for the refusal to issue a license.

(2) (i) If a retail food facility licensed by the department is in violation of a provision of this subchapter, or of a regulation promulgated under authority of this subchapter, or of any other act related to public health and being applicable to retail food facilities, the department may suspend or revoke the license. If a retail food facility licensed by an entity other than the department is in violation of a provision of this subchapter, or of a regulation promulgated under authority of this subchapter, or of any other act related to public health and being applicable to retail food facilities, or of the regulations of the licensor pertaining to retail food facilities, the licensor may suspend or revoke the license. The suspension of a license shall be terminated when the violation for which it was imposed has been found, upon inspection by the licensor, to have been corrected. Whenever a license is suspended or revoked, no part of the fee paid therefore shall be returned to the proprietor.

(ii) A licensor may, as an alternative to suspending or revoking a license, provide a licensee a reasonable interval within which to correct conditions that constitute a violation that would result in the suspension or revocation of the license, provided that the health and safety of the employees, occupants and patrons of the retail food facility can be reasonably assured during that interval.

(j) Fees.--The fees that may be charged under this subchapter are as established by the licensor, if the licensor is an entity other than the department, and shall be paid into the city, borough, incorporated town, township or county treasury. If the licensor is the department, the fees shall be paid to the State Treasury through the department and are as follows:

(1) For licensure of a retail food facility that has not been previously licensed and that is owner operated and that has a seating capacity of less than 50: $103.

(2) For licensure of a retail food facility that has not been previously licensed and that is not described in paragraph (1): $241.

(3) For a renewal of a license or for issuing a license to reflect a change of ownership: $82.

(4) For a duplicate license, for each retail food facility location: $14.

(5) For a temporary license under subsection (g)(2): $14.

(6) For conducting a follow-up inspection to review whether changes have been made to correct violations which resulted in noncompliant status determined by a prior inspection:

(i) For the second follow-up inspection during the licensure period: $150.

(ii) For a third or subsequent follow-up inspection during the licensure period: $300.

(7) For conducting an inspection that is not otherwise required by the department but that is conducted at the behest of the proprietor of the retail food facility: $150.

(8) For any license described in paragraph (1), (2), (3), (4) or (5) that is issued for a period of greater than one year by regulation of the department in accordance with

subsection (g), the license fee otherwise prescribed under those paragraphs shall be prorated for the license period.

(k) Multiple retail food facilities.--Whenever any proprietor maintains more than one retail food facility within this Commonwealth, the proprietor shall be required to apply for and procure a license for each retail food facility.
(Oct. 24, 2012, P.L.1434, No.180, eff. 60 days)

2012 Amendment. Act 180 amended subsec. (b)(2).

Cross References. Section 5703 is referred to in section 5707 of this title.

§ 5704. Inspection, sampling and analysis.

(a) Inspection.--For purposes of enforcement of this subchapter, a licensor is authorized, upon presenting appropriate credentials to the person in charge:

(1) To enter at reasonable times any retail food facility.

(2) To inspect at reasonable times, within reasonable limits and in a reasonable manner, the retail food facility.

(3) To obtain a sample of any food at a retail food facility for analysis as may be necessary to determine compliance with this subchapter if the licensor, upon completion of the inspection and prior to leaving the facility, provides the person in charge a receipt describing the sample obtained.

(b) Billing.--A retail food facility from which a sample was collected may bill the licensor for the fair market value of the sample.

(c) Report.--Upon completion of an inspection of a retail food facility and prior to leaving the premises, a licensor shall give to the person in charge a written report of the findings of the inspection. Results from the analysis of any samples taken shall be provided to the person in charge within 30 days of receipt.

§ 5705. (Reserved).

§ 5706. (Reserved).

§ 5707. Powers of department.

(a) Rules and regulations.--The department shall make such reasonable rules and regulations as may be deemed necessary for carrying out the provisions and intent of this subchapter. In promulgating regulations, the department shall be guided by the most current edition of the Food Code, published by the United States Department of Health, Food and Drug Administration. The regulatory standards established by the department under this section shall be the standards followed and applied by any licensor with respect to retail food facilities.

(b) Food service at schools and organized camps.--

(1) The department shall provide for the inspection of a food service at a school and for the training of school food service personnel in accordance with the standards applied to retail food facilities for schools located in areas in which the department is the licensor. Upon request, the department shall provide training to school food service personnel or inspections of a food service at a school located in areas in which the department is not the licensor.

(2) The department shall provide for the inspection of a food service at organized camps and for the training of food service personnel at organized camps in accordance with the standards applied to retail food facilities for organized camps located in areas in which the department is the licensor. Upon request, the department shall provide training to organized camp food service personnel or inspections of

a food service at organized camps located in areas in which the department is not the licensor.

(c) Inspection.--If a licensor fails to inspect a retail food facility as required under section 5703(e) (relating to license required), the department shall have the authority to license and inspect all retail food facilities under that licensor's jurisdiction, and the licensor that failed to comply with the inspection requirement shall not charge or collect any fee for licensing subject retail food facilities. If the department conducts an inspection, it shall, within 30 days, provide the licensor a copy of the inspection report.

(d) Interagency coordination.--The department shall provide inspection reports or test results that indicate human illness related to food consumption or food handling practices, or to other threats to the safety of the food supply, to the Department of Health, the Department of Environmental Protection or any other Commonwealth agency as necessary to develop a comprehensive, coordinated interagency approach to protecting public health and safeguarding the food supply.

§ 5708. Infectious persons.

No proprietor shall allow any food employee to be in a retail food facility if that person has an infectious or communicable disease, as prohibited under the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955, and its attendant regulations related to restrictions on food handlers. In consultation with the Department of Health, the department may promulgate regulations with respect to specific illnesses as related to operations in a retail food facility as it deems necessary for the protection of public health.

§ 5709. Linens, equipment and utensils.

No proprietor shall utilize any linens, equipment or utensils unless the linens, equipment or utensils have been thoroughly cleansed and sanitized in the manner prescribed by regulation of the department.

§ 5710. Retail food facility and employee cleanliness.

All retail food facilities, kitchens, dining rooms and all places where foods are prepared, kept or stored shall be kept in a clean and sanitary condition and be protected from dust, dirt, insects and vermin in the manner prescribed by the regulations of the department. The clothing and hands of employees shall at all times be clean and sanitary. Except when washing fruits and vegetables or when approved by the department, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment. No domestic pets or other animals shall be permitted where food or drink is prepared, handled or stored unless specifically permitted or required under the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or other Federal or State law. No person shall be permitted to use for living or sleeping purposes any room or place in any retail food facility which is regularly and customarily used for the preparation, handling, storing or serving of food.

§ 5711. Toilets, sinks and drains.

All toilets, hand-wash sinks, tubs, sinks and drains used in or in connection with any retail food facility shall at all times be kept in a clean and sanitary condition.

§ 5712. Applicability.

This subchapter shall not apply to food that meets all of the following requirements:

(1) The food is not potentially hazardous food.

(2) The food is prepared in a private home.

(3) The food is used or offered for human consumption by any of the following organizations:

(i) A tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(ii) A volunteer fire company or ambulance, religious, charitable, fraternal, veterans, civic, sportsmen, agricultural fair or agricultural association or any separately chartered auxiliary of any of these associations, on a not-for-profit basis.

(iii) An organization that is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis.

(4) The organization that uses or offers the food for human consumption informs consumers that the organization uses or offers food that has been prepared in private homes that are not licensed or inspected.

(5) The food is donated to an organization described under paragraph (3).

§ 5713. School cafeterias and organized camps.

Officials of schools and organized camps shall cooperate with the department in the conduct of cafeteria health and safety inspections and shall participate in inspection services and training programs made available by the department in areas where the department is the licensor. Upon request, the department shall provide training to school or organized camp food service personnel or inspections of a food service at a school or organized camp located in areas in which the department is not the licensor.

§ 5714. Penalties.

(a) Retail food facilities under jurisdiction of department.--For retail food facilities under the jurisdiction of the department, penalties are as follows:

(1) A person who violates any provision of this subchapter or any rule, regulation, standard or order made under this subchapter commits a summary offense for the first or second offense and shall be subject to a fine not less than $100 but not more than $300. A person who violates any provision of this subchapter or any rule, regulation, standard or order made under this subchapter commits a misdemeanor of the third degree if the violation is a third or subsequent offense and if the violation occurs within two years of the date of the last previous offense.

(2) In addition to proceeding under any other remedy available at law or in equity for a violation of this subchapter or a rule or regulation adopted or any order issued under this subchapter, the secretary may assess a civil penalty not to exceed $10,000 upon an individual or business for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing in accordance with law. In determining the amount of the penalty, the secretary shall consider the gravity of the violation. Whenever the secretary finds a violation which did not cause harm to human health, the secretary may issue a warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or failure of any person to pay all or any portion of the penalty as the secretary may determine, the secretary may

refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

(b) Retail food facilities under other jurisdiction.--Penalties shall be established by the licensor for retail food facilities under the jurisdiction of a licensor that is not the department.

SUBCHAPTER B
FOOD SAFETY

Sec.

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Enactment. Subchapter B was added November 23, 2010, P.L.1039, No.106, effective in 60 days.

Cross References. Subchapter B is referred to in section 4612 of this title.

§ 5721. Short title of subchapter.

This subchapter shall be known and may be cited as the Food Safety Act.

§ 5722. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Color additive." A material which is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source and when added or applied to a food is capable, alone or through reaction with other substances, of imparting color thereto. The term includes black, white and intermediate grays. The term does not include:

(1) Any material which the Secretary of Agriculture, by regulation, determines is used or intended to be used solely for a purpose or purposes other than coloring.

(2) Any pesticide chemical, soil or plant nutrient or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

"Federal acts." The Wholesome Meat Act (Public Law 90-201, 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et

seq.), the Fair Packaging and Labeling Act (Public Law 89-755, 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and the Nutrition Labeling and Education Act of 1990 (Public Law 101-535, 104 Stat. 2353).

"Food." An article used for food or drink by humans, including chewing gum and articles used for components of any article. The term does not include medicines and drugs.

"Food additive." A substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food if the substance is not generally recognized among experts qualified by scientific training and expertise to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. The term does not include the following:

(1) A pesticide chemical in or on a raw agricultural commodity.

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.

(3) A color additive.

(4) Any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to a statute repealed by this act, pursuant to the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et seq.) or pursuant to the Wholesome Meat Act (Public Law 90-201, 21 U.S.C. § 601 et seq.).

(5) A new animal drug.

As used in this definition, the term "substance" includes any substance intended for use in producing, manufacturing, packaging, processing, preparing, treating, transporting or holding food and any source of radiation intended for any use.

"Food establishment." 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, transporting or handling food. The term excludes retail food facilities, retail food establishments and public eating and drinking places and those portions of establishments operating exclusively under milk or milk products permits.

"Imitation food." A food that is a substitute for and resembles another food but is nutritionally inferior to that food.

"Label." A display of written, printed or graphic matter upon the immediate container of any food. The term "immediate container" does not include package liners.

"Labeling." All labels and other written, printed or graphic matter upon a food or any of its containers or wrappings.

"Package." Any container or wrapping in which food is enclosed for delivery or display to retail purchasers. The term does not include the following:

(1) Shipping containers or wrappings for the transportation of food in bulk or quantity to manufacturers, packers or processors or to wholesale or retail distributors.

(2) Shipping containers or wrappings used by retailers to ship or deliver food to retail customers, if the

containers or wrappings bear no printed matter pertaining to food.

(3) Containers used for tray pack displays in retail establishments.

(4) Transparent containers or wrappings which do not bear written, printed or graphic matter which obscures information required to be displayed on the label.

"Pesticide chemical." A substance used in the production, storage or transportation of raw agricultural commodities which, alone or in chemical combination or formulation with one or more other substances, is a pesticide within the meaning of the act of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act of 1973.

"Potentially hazardous food." As defined in section 5702 (relating to definitions).

"Principal display panel." A part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale and is large enough to accommodate all the mandatory information required to be placed on the label.

"Public eating or drinking place." As defined in section 5702 (relating to definitions).

"Raw agricultural commodity." A food in its raw or natural state, including all fruits which are washed, colored or otherwise treated in their unpeeled, natural form prior to marketing.

"Retail food establishment." As defined in section 5702 (relating to definitions).

"Retail food facility." As defined in section 5702 (relating to definitions).

"Secretary." Includes an authorized representative, employee or agent of the Department of Agriculture.

Cross References. Section 5722 is referred to in sections 5702, 5733, 6502 of this title.

§ 5723. Prohibited acts.

The following acts are prohibited:

(1) Manufacture, sale, delivery, consignment, bailment, holding or offering for sale of any food that is adulterated or misbranded, except where a person in good faith delivers or offers to deliver the food and furnishes shipping documents to the secretary.

(2) Adulteration or misbranding of any food.

(3) Knowingly receiving in commerce any food which is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.

(4) Sale, delivery for sale, holding for sale or offering for sale any article in violation of section 5731 (relating to poisonous or deleterious substances and tolerances).

(5) Refusal to permit during normal business hours entry to, inspection of or taking of a sample or access to or copying of any record at a food establishment as authorized under section 5732(a)(2) and (3) (relating to inspection, sampling and analysis).

(6) Removal or disposal of a detained or embargoed food article in violation of section 5726 (relating to detention and condemnation).

(7) Alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of a food or the doing of any other act with respect to a food,

if the act is done while the food is held for sale and results in the food being adulterated or misbranded.

(8) Forging, counterfeiting, simulating, falsely representing or using without proper authority any mark, stamp, tag, label or other identification device authorized or required by regulation promulgated under this subchapter.

(9) Use by any person to his own advantage or revealing, other than to the secretary or the courts when relevant in any judicial proceeding under this subchapter, of any information acquired under authority of this subchapter concerning any method or process which, as a trade secret or confidential trade information, is entitled to protection.

(10) Holding of any potentially hazardous food at unsafe temperatures in violation of an applicable regulation issued under this chapter.

(11) Failure to register with the department under the provisions of section 5734 (relating to registration of food establishments).

(12) Use of wording which incorrectly indicates or implies that a label or product has received approval of the department. A food establishment may not claim registration either upon its label or package or otherwise, except as provided in section 5735 (relating to product registration).

(13) Sale of confectionery containing alcohol at a level above one-half of 1% by volume.

(14) Failure by a carrier to make records showing the movement in commerce of any food or the holding thereof during or after the movement and the quantity, shipper and consignee thereof available for one year after the initial date of movement of the food in commerce.

§ 5724. Temporary or permanent injunctions.

In addition to any other remedies provided in this subchapter, the secretary may apply to the Commonwealth Court or to any other court having jurisdiction for a temporary or permanent injunction restraining a person from violating this subchapter or any regulation adopted under this subchapter.

§ 5725. Penalties.

(a) Criminal penalties.--A person who violates any provision of this subchapter or any rule, regulation, standard or order made under this subchapter commits a summary offense for the first or second offense. A person who violates this subchapter or any rule, regulation, standard or order made under this subchapter commits a misdemeanor of the third degree if the violation is a third or subsequent offense and if the violation occurs within two years of the date of the last previous offense.

(b) Civil penalties.--In addition to proceeding under any other remedy available at law or in equity for a violation of this subchapter, or a rule or regulation adopted or any order issued under this subchapter, the secretary may assess a civil penalty not to exceed $10,000 upon an individual or business for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing in accordance with law. In determining the amount of the penalty, the secretary shall consider the gravity of the violation. Whenever the secretary finds a violation which did not cause harm to human health, the secretary may issue a warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or failure of any person to pay all or any portion of the penalty as the secretary may determine, the secretary may refer the matter to the Attorney

General, who shall recover the amount by action in the appropriate court.

(c) Guaranty.--

(1) No prosecution shall be sustained under the provisions of this subchapter for the manufacture, delivery, consignment, bailment, holding or sale of or offering for sale, exposing for sale or having in possession with intent to sell any adulterated or misbranded article against a person from whom the article of food, sample or portion was obtained by the department if the person can establish a guaranty to the effect that the article of food is not adulterated or misbranded within the meaning of this subchapter, was adulterated or misbranded prior to coming into the possession of the person and the person did not know or have reason to know of the adulteration or misbranding or was adulterated or misbranded after it left the possession and control of the person. The guaranty must be signed by the supplier, manufacturer, wholesale dealer, jobber or distributor from whom the articles of food were purchased or procured.

(2) The guaranty to afford protection shall contain the name and address of the supplier, manufacturer, wholesale dealer, jobber or distributor making the sale of the article of food to the person holding the guaranty. A supplier, manufacturer, wholesale dealer, jobber or distributor giving a guaranty under the provisions of this subchapter may be held responsible and may be proceeded against for the adulteration or misbranding of any article of food sold under the guaranty and shall be subject to the penalties provided for violation of this subchapter. A guaranty shall not operate as a defense to prosecution for a violation of the provisions of this subchapter if the person holding the guaranty continues to sell the same food after written or printed notice from the secretary that the article is adulterated or misbranded within the meaning of this subchapter. However, if the person violated the provisions of this subchapter by having stored, transported, exposed or kept the article in a way or manner to render it diseased, contaminated or unwholesome, the person may be proceeded against for a violation.

(d) Minor violations.--Nothing in this subchapter shall be construed as requiring prosecution or institution of a proceeding under this subchapter for minor violations of this subchapter if the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

(e) Food establishments subject to local inspections.--Penalties shall be established by the county, borough, incorporated town or township for food establishments that are subject to local inspection under section 5733(b) (relating to rules and regulations).

§ 5726. Detention and condemnation.

(a) Marking detained food.--Whenever the secretary has probable cause to believe that food is adulterated or misbranded, the secretary shall affix to the container or wrapping a tag or other marking. The tag or marking shall give notice that:

(1) The food may be adulterated or misbranded and shall be detained.

(2) It is unlawful to remove the food from the food establishment or to dispose of it without approval of the secretary.

(b) Determination and appeal.--The secretary shall determine whether a food detained under this subchapter may be sold, delivered, consigned, held or offered for sale as is or whether it shall be relabeled, reprocessed or destroyed within 40 days of issuance of the detention order. Any determination by the secretary that the food shall be relabeled, reprocessed or destroyed shall be subject, within 30 days of the determination, to appeal by the owner or operator of the food establishment or the manufacturer or owner of the food to the court of common pleas of the county in which the food was located. The detention order shall expire after five working days from the issuance of the order, unless the secretary confirms the order. The order shall clearly and concisely state the facts on which it is based.

(c) Relabeling.--If the secretary determines that the adulteration or misbranding can be corrected by a proper label or reprocessing and the determination is not appealed within the time permitted, the secretary may direct that the food be released to the claimant to label or process under the supervision of the secretary. The relabeled or reprocessed food shall not be released into the market until the secretary has executed an order indicating that the food is no longer in violation of this subchapter.

(d) Order for destruction.--Food detained under this subchapter shall be destroyed by the owner under the supervision of the secretary, if the secretary determines that the food is unfit for human consumption and the food cannot be reconditioned so as to be made fit for human consumption and the determination is not appealed within the time permitted. Food detained under this subchapter may be used as animal feed or for other beneficial use, provided that such use is in compliance with other applicable statutes, rules, regulations, standards and orders. The owner shall pay all costs of destruction.

Cross References. Section 5726 is referred to in section 5723 of this title.

§ 5727. Temporary permits.

Temporary permits granted by Federal agencies for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity in Federal acts shall be effective in this Commonwealth under the conditions provided in the permits. The secretary may issue intrastate permits where they are necessary to the completion of an investigation and where the interests of consumers are safeguarded for foods not complying with definitions, standards of identity and State laws and regulations. The permits shall be for a period not to exceed one year, although the permit may be extended for a period of up to one additional year if a new standard of identity has been applied for under section 5733 (relating to rules and regulations). The secretary may revoke a permit after notice to the affected party if the application contains misleading statements or if the secretary determines that unfair competitive advantage is gained through the issuance of the permit or that the need no longer exists for the permit.

§ 5728. Adulteration of food.

A food shall be deemed adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the food shall not be considered adulterated under this section if the quantity of the substance in the food does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 5731 (relating to poisonous or deleterious substances and tolerances). This paragraph does not apply to a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive.

(3) If it is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 5731, except that, where a pesticide chemical has been used in or on a raw agricultural commodity with an exemption granted or tolerance prescribed under section 5731 or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide remaining in or on the processed food shall, notwithstanding the provisions of section 5731 and this paragraph, not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(4) If it bears or contains any food additive which is unsafe within the meaning of section 5731 or under any of the Federal acts.

(5) If it consists, in whole or in part, of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unfit for food.

(6) If it has been produced, prepared, packed or held under unsanitary conditions so that it may have become contaminated with filth or may have been rendered diseased, unwholesome or injurious to health.

(7) If it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter.

(8) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health, unless the container is fabricated or manufactured with good manufacturing practice as that standard is defined and delineated by any of the Federal acts and their regulations.

(9) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under section 5731 or under one of the Federal acts.

(10) If:

(i) any valuable constituent has been, in whole or in part, omitted or abstracted therefrom;

(ii) any substance has been substituted wholly or in part;

(iii) damage or inferiority has been concealed in any manner; or

(iv) any substance has been added thereto or mixed or packed so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.

(11) If it bears or contains any color additive which is unsafe within the meaning of section 5731 or under one of the Federal acts.

(12) If it bears or contains eggs processed by or egg products derived from a manufacturing, processing or preparing method wherein whole eggs are broken using a

centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell.

Cross References. Section 5728 is referred to in section 5731 of this title.

§ 5729. Misbranding of food.

(a) General rule.--A food shall be misbranded:

(1) If its labeling is false or misleading in any way.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food that is simulated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If it is in a package that does not bear a label containing:

(i) The name and place of business of the manufacturer, packer or distributor.

(ii) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count. Reasonable variations are permitted and exemptions as to small packages shall be established in regulations promulgated by the secretary.

(6) If it is represented as a food for which a definition and standard of identity has been prescribed by regulation under this subchapter or under any of the Federal acts, unless it conforms to the definition and standard and its label bears the name of the food specified in the definition and standard and the common names of optional ingredients, other than spices, flavoring and coloring, present in the food.

(7) Unless its label bears the following:

(i) The common or usual name of the food, if any.

(ii) If made from two or more ingredients, the common or usual name of each ingredient is listed in descending order of predominance by weight, except that spices, flavorings and colorings not required to be certified under any of the Federal acts, other than those sold as such, may be designated as spices, flavorings and colorings without naming each.

(8) If it is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as determined by regulation to be necessary and in order to inform purchasers as to its value for such use.

(9) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact. Exemptions shall be established by regulations to the extent that compliance with requirements of this paragraph is impracticable. The provisions of this paragraph or paragraphs (6) and (7) with respect to artificial coloring shall not apply in the case of butter, cheese or ice cream. The provisions of this paragraph with respect to chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

(10) If it is a raw agricultural commodity bearing or containing a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling which declares the presence of the chemical and the common or usual

name and function of the chemical. A declaration shall not be required when the commodity is removed from the shipping container and is held or displayed for sale at retail in accordance with the custom of the trade.

(11) If it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to color additives in department regulations.

(12) If, at the site of purchase of the particular food, a sign, placard or other graphic matter relating to the food is false or misleading in any particular.

(b) Exceptions.--The provisions of subsection (a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) shall not apply to the following:

(1) Bakery goods sold at retail by the bakery directly to the consumer in a store or market stand operated by the bakery. The bakery goods must be made by the bakery, the bakery must guarantee that they are in compliance with this act in all other respects and the required information in subsection (a)(1), (2), (3), (4), (5), (6), (7), (8) and (9) must be available to the public at the point-of-sale.

(2) Bakery goods sold to the operators of retail food facilities when the required information in subsection (a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) is available to the public on the premises of the retail food facility.

(c) Nonpackaged food.--Food offered for retail sale in other than package form shall be accompanied by a sign, placard or notice listing the ingredients in descending order of predominance by weight.

§ 5730. Regulations to exempt certain labeling requirements.

The department shall promulgate regulations exempting from any labeling requirement food which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed if the food is not adulterated or misbranded under this subchapter upon removal from the processing, labeling or repacking establishments.

§ 5731. Poisonous or deleterious substances and tolerances.

(a) Additions to food.--A poisonous or deleterious substance added to a food, except where the substance is required in its production and cannot be avoided by good manufacturing practice, shall be deemed to be unsafe unless added in compliance with the Federal acts.

(b) Pesticide chemicals in or on raw agricultural commodities.--A poisonous or deleterious pesticide chemical, or any chemical which is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity shall be deemed unsafe unless added in compliance with the Federal acts.

(c) Unsafe food additives.--A food additive shall, with respect to any particular use or intended use, be deemed to be unsafe for the purposes of the application of section 5728(4) (relating to adulteration of food) unless it and its intended use conform to the terms of an exemption which is in effect under this section or unless there is in effect, and it and its intended use are in conformity with, a regulation issued under this section prescribing the conditions under which the additive may be safely used. A food which is in compliance with a regulation relating to a food additive shall not, by reason of bearing or containing an additive in accordance with the

regulations, be considered adulterated within the meaning of section 5728(4).

Cross References. Section 5731 is referred to in sections 5723, 5728 of this title.

§ 5732. Inspection, sampling and analysis.

(a) Inspection.--For purposes of enforcement of this subchapter, the secretary is authorized, upon presenting appropriate credentials to the owner, operator or agent in charge:

(1) To enter at reasonable times any factory, warehouse or food establishment in which food is or was manufactured, processed, packed or held for introduction into commerce or to enter any vehicle used to transport or hold the food in commerce.

(2) To inspect at reasonable times, within reasonable limits and in a reasonable manner, the factory, warehouse, food establishment or vehicle and all pertinent materials, containers and labeling and to obtain samples necessary to administer this subchapter.

(3) To have access to and to copy all records of carriers showing the movement in commerce of any food or the holding thereof during or after the movement, and the quantity, shipper and consignee thereof, if the secretary has probable cause to believe that the movement or holding of food is in violation of this subchapter or department regulations.

(b) Report of inspection.--Upon completion of an inspection of a factory, warehouse or other food establishment and prior to leaving the premises, the secretary shall give to the owner, operator or agent in charge a written report of the findings of the inspection.

(b.1) Interagency coordination.--The department shall share inspection reports or tests results that indicate human illness related to food consumption or food handling practices, or to other threats to the safety of the food supply, with the Department of Health, the Department of Environmental Protection or any other Commonwealth agency as necessary to develop a comprehensive, coordinated interagency approach to protecting public health and safeguarding the food supply.

(c) Collection of samples.--During an inspection of a factory or other food establishment where food is manufactured, processed, packed, stored or offered for sale, the secretary may obtain a sample of any food for such analysis as is necessary to determine compliance with this subchapter.

(d) Receipt for samples.--If the secretary has obtained any sample in the course of the inspection, the secretary shall, upon completion of the inspection and prior to leaving the premises, give to the owner, operator or agent in charge a receipt describing the sample obtained.

(e) Payment of samples.--The food establishment from which samples are collected may bill the secretary for the fair market value of the samples.

Cross References. Section 5732 is referred to in section 5723 of this title.

§ 5733. Rules and regulations.

(a) Nature of rules.--The secretary shall be charged with the enforcement of this subchapter and shall promulgate rules, regulations and food standards necessary for its proper enforcement. The rules, regulations and food standards shall conform and shall be construed to conform with the purposes

expressed in section 5736 (relating to construction of subchapter).

(b) Local inspection.--Nothing in this subchapter shall prohibit any county, city, borough, incorporated town or township which was licensing food establishments in accordance with the act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, or the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law, on September 2, 1994, from continuing to license such food establishments in accordance with the First Class City Home Rule Act or the Local Health Administration Law. No county, city, borough, incorporated town or township shall ordain or enforce requirements of any kind or description with respect to food establishments related to sanitation, food safety, inspections, standards and labeling other than those promulgated by the secretary in accordance with this subchapter or adopted in accordance with subsection (f).

(c) Reciprocal inspection.--The secretary is authorized to enter into reciprocal agreements with other jurisdictions to ensure inhabitants of this Commonwealth that food sold in this Commonwealth complies with this subchapter and its regulations. The agreements may be for reciprocal inspection and labeling review. The secretary may approve or accept inspection and labeling requirements of other jurisdictions with respect to food.

(d) Uniform regulation.--In reaching reciprocal agreements with other jurisdictions, the provisions of this subchapter and its regulations shall be considered as establishing uniform requirements and regulations for food establishments throughout this Commonwealth as defined in section 5722 (relating to definitions).

(e) Interagency agreements.--Nothing in this subchapter shall prohibit a Commonwealth agency which is regulating and inspecting retail food facilities in accordance with Subchapter A (relating to retail food facility safety) from continuing to regulate and inspect retail food facilities in accordance with Subchapter A.

(f) Adoption of Federal regulations.--All regulations and supplements thereto or revisions thereof adopted under the Federal acts which relate to food on, before or after the effective date of this subchapter are adopted as regulations in this Commonwealth and shall remain in effect unless subsequently modified or superseded by regulations promulgated by the secretary.

(g) Water standards.--If a food establishment uses or supplies water for human consumption, the water shall be in compliance with the primary and secondary Maximum Contaminant Levels (MCL), treatment techniques and Maximum Residual Disinfectant Levels (MRDL) required by the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and its attendant regulations.

(h) Definitions.--As used in this section, the phrase "other jurisdictions" shall mean the United States of America or any state, territory or possession thereof or any other country.

Cross References. Section 5733 is referred to in sections 5725, 5727 of this title.

§ 5734. Registration of food establishments.

(a) General rule.--Subject to the rules and regulations adopted by the secretary, it shall be the duty of every person operating a food establishment within this Commonwealth to register with the secretary as a food establishment. This

registration requirement shall not be construed to exempt food establishments from licensing requirements of any county, city, borough, incorporated town or township in accordance with the act of April 21, 1949 (P.L.665, No.155), known as the First Class City Home Rule Act, or the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law.

(b) Application.--The application for registration shall be made on a form to be supplied by the secretary upon request of the applicant.

(c) Fee.--The registration fee shall be $35 per food establishment per year.

(d) Exceptions.--All of the following shall be exempt from the provisions of this section:

(1) Vehicles used primarily for the transportation of any consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors.

(2) A food establishment that is in compliance with the act of July 20, 1974 (P.L.537, No.184), referred to as the Honey Sale and Labeling Act, and in which 100% of the regulated products offered for human consumption are produced or processed on the farm on which the food establishment is located.

(e) Single food establishment.--For purposes of this section, food establishments which are located at the same address and operated by the same person shall be deemed to be a single food establishment.

(Oct. 24, 2012, P.L.1434, No.180, eff. 60 days)

2012 Amendment. Act 180 amended subsec. (d).

Cross References. Section 5734 is referred to in sections 5723, 5735 of this title.

§ 5735. Product registration.

The secretary may promulgate regulations allowing food establishments to label their food products as having been registered by the department. "Reg. Penna. Dept. Agr." shall be the approved abbreviation. This registration label shall be limited to food products prepared or packed in a food establishment registered under section 5734 (relating to registration of food establishments).

Cross References. Section 5735 is referred to in section 5723 of this title.

§ 5736. Construction of subchapter.

(a) General rule.--The provisions of this subchapter and the regulations promulgated under this subchapter shall be construed in a manner that is consistent with the Federal acts and regulations promulgated under those acts. The secretary shall not ordain or enforce requirements relating to sanitation, food safety, food standards and labeling requirements of any kind or description other than those provided for in the Federal acts unless the proposed regulation meets all of the following:

(1) is justified by compelling and unique local conditions;

(2) protects an important public interest that would otherwise be unprotected;

(3) relates to subject matter that is primarily local in nature and the Federal agency with responsibility over the subject matter is not exercising its jurisdiction with respect to the subject matter;

(4) would not cause a food to be in violation of any applicable requirements under the Federal acts; and

(5) would not unduly burden interstate commerce.

(b) Secretary to participate in rulemaking.--The secretary is encouraged to participate in rulemaking under the Federal acts and, if necessary, to pursue Federal rulemaking as is deemed necessary for the protection of the citizens of this Commonwealth through the Federal petition and rulemaking process.

Cross References. Section 5736 is referred to in section 5733 of this title.

§ 5737. Acts not affected.

Nothing in this subchapter shall be construed to abrogate or supersede any provision or regulation adopted under:

(1) The act of July 2, 1935 (P.L.589, No.210), referred to as the Milk Sanitation Law, the act of August 8, 1961 (P.L.975, No.436), referred to as the Milk Adulteration and Labeling Act, and the act of September 1, 1965 (P.L.420, No.215), known as The Frozen Dessert Law.

(2) Subchapter A (relating to retail food facility safety).

References in Text. The act of September 1, 1965 (P.L.420, No.215), known as The Frozen Dessert Law, referred to in this section, was repealed by the act of November 6, 2023 (P.L.167, No.27).

SUBCHAPTER C
MILK SELL-BY DATE AND BEST-BY DATE LABELING

Sec.

5741. Scope of subchapter.
5742. Definitions.
5743. Label requirement.
5744. Sell-by date or best-by date of greater than 17 days from pasteurization.
5745. Prohibitions.
5746. Monitoring by milk plants and department.
5747. Regulations.

Enactment. Subchapter C was added June 30, 2021, P.L.333, No.62, effective in 30 days.

Special Provisions. Section 2 of Act 62 of 2021 provided that the provisions of 7 Pa. Code § 59a.15 are abrogated to the extent of any inconsistency with Act 62.

§ 5741. Scope of subchapter.

This subchapter relates to milk sell-by date and best-by date labeling.

§ 5742. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Milk." As defined in section 1 of the Milk Sanitation Law.

"Milk plant." As defined in section 1 of the Milk Sanitation Law and permitted under section 2 of the Milk Sanitation Law.

"Milk Sanitation Law." The act of July 2, 1935 (P.L.589, No.210), referred to as the Milk Sanitation Law.

"Pennsylvania-approved dairy laboratory." Any of the following:

(1) A commercial or regulatory laboratory approved and certified by the department within the preceding two years to do official analyses of milk.

(2) A milk industry laboratory approved and certified by the department within the preceding two years for the examination of producer samples of milk for pasteurization, commingled milk for pasteurization or raw milk for human consumption for the detection of drug residues, bacterial limits and somatic cell count.

"Retail food facility." As defined in section 5702 (relating to definitions).

§ 5743. Label requirement.

(a) General rule.--The cap or nonglass container of pasteurized milk held in retail food facilities for resale shall be conspicuously and legibly marked in a contrasting color with a sell-by date or a best-by date.

(b) Sell-by date.--A sell-by date shall consist of:

(1) a designation of the month and the day of the month after which the product may not be sold or offered for sale, whether expressed in standard fashion (such as "August 15"), numerically (such as "8-15") or with the use of an abbreviation (such as "Aug. 15" or "AU 15"); and

(2) either:

(i) the words "Sell by" or "Not to be sold after" preceding that designation and appearing legibly on the cap or nonglass container; or

(ii) the statement "Not to be sold after the date stamped above" following that designation and appearing legibly on the cap or nonglass container.

(c) Best-by date.--A best-by date shall consist of:

(1) a designation of the month and the day of the month in a format as provided in subsection (b) established by the milk plant as a product quality guideline; and

(2) the words "Best by," "Best if consumed by" or "Best if used by" preceding the designation and appearing legibly on the cap or nonglass container.

(d) Prominence of sell-by date or best-by date on label.--The sell-by date or best-by date shall be separate and distinct from any other number, letter or intervening material on the cap or nonglass container.

(e) Limitation.--A sell-by date or a best-by date may not exceed 17 days beginning after midnight on the day on which the milk was pasteurized, unless the department approves a longer interval in accordance with the procedure described in section 5744 (relating to sell-by date or best-by date of greater than 17 days from pasteurization).

(f) Exempt pasteurized milk and required lot number or manufacturing date code information for pasteurized milk.--The following types of pasteurized milk are exempt from the requirements of this subchapter, provided that the cap or nonglass container contains a lot number or manufacturing date code that is acceptable to the department and can be used for product traceability in the marketplace:

(1) Ultrapasteurized milk.

(2) Cultured milk.

(3) Aseptically processed milk.

(4) Milk that has undergone higher heat shorter time pasteurization.

(5) Milk sold or offered for retail sale on the same premises at which it was processed.

Cross References. Section 5743 is referred to in section 5744 of this title.

§ 5744. Sell-by date or best-by date of greater than 17 days from pasteurization.

(a) General rule.--A milk plant may apply to the department for approval to use a sell-by date or a best-by date that exceeds the 17-day period referenced in section 5743(e) (relating to label requirement). Approval shall be by type of milk and type and volume of the milk container.

(b) Approval process.--Approval may be obtained by the following process:

(1) The applicant must apply to the department for approval to use a specific sell-by or best-by date that exceeds the 17-day period referenced in section 5743(e), using a form provided by the department.

(2) The applicant must specify on the form, by milk type and type and volume of container, each product for which approval is sought, and the specific sell-by date or best-by date proposed for that product as packaged.

(3) For each milk type and type and volume of container with respect to which approval is sought, the applicant must include scientific documentation as the department may require to confirm the following:

(i) unopened samples from at least three different production days were maintained at a temperature of between 34 and 45 degrees Fahrenheit for no less than the entire proposed sell-by date or best-by date period;

(ii) after the proposed sell-by date or best-by date period ended, each sample was opened and tested for bacterial count, and the bacterial count for each sample did not exceed the bacteriological standards for milk set forth in the department's milk sanitation regulations; and

(iii) the testing was completed within three months preceding the date the application was submitted to the department.

(c) Continuation of approval.--Approval issued by the department under this section shall remain in effect as long as the milk plant continues to complete the periodic sampling and testing required in section 5746 (relating to monitoring by milk plants and department) and the bacterial test results do not exceed the bacterial limits for pasteurized milk described in section 5746.

Cross References. Section 5744 is referred to in sections 5743, 5746 of this title.

§ 5745. Prohibitions.

(a) Sell-by date.--Pasteurized milk may not be sold or offered for sale if the milk is sold or offered for sale after the sell-by date designated on the cap or nonglass container.

(b) Best-by date.--Pasteurized milk may not be sold or offered for sale if the milk is sold or offered for sale after the best-by date designated on the cap or nonglass container.

§ 5746. Monitoring by milk plants and department.

(a) Sampling and testing.--

(1) If a milk plant labels milk with a sell-by date or a best-by date that is no later than 17 days beginning after midnight on the day on which the milk was pasteurized, the milk plant shall, at intervals of no greater than 12 months and for the highest-selling-volume milk type and each type and volume of container of that highest-selling-volume milk type bearing that label information, sample and test in accordance with the methodology specified in subsection (b).

(2) If a milk plant labels milk with a sell-by date or a best-by date that is greater than 17 days beginning after midnight on the day on which the milk was pasteurized and

that has been approved by the department in accordance with section 5744 (relating to sell-by date or best-by date of greater than 17 days from pasteurization), the milk plant shall, at intervals of no longer than six months and for the highest-selling-volume milk type and each type and volume of container of that highest-selling-volume milk type bearing that label information, sample and test in accordance with the methodology specified in subsection (b).

(3) The department shall periodically sample containers of pasteurized milk in the possession of the milk plant. The sampling may occur at any time before the pasteurized milk is delivered to a retail food facility or the customer.

(b) Methodology.--

(1) The samples described in subsection (a)(1) and (2) shall be analyzed by a Pennsylvania-approved dairy laboratory.

(2) The samples described in subsection (a)(3) shall be analyzed by the department or a Pennsylvania-approved dairy laboratory.

(3) The analysis shall determine whether the bacterial test results exceed the bacterial limits for pasteurized milk described in the department's milk sanitation regulations prior to the expiration of the sell-by date or best-by date designated on the cap or nonglass container.

(c) Reporting.--A Pennsylvania-approved dairy laboratory that performs any of the testing required under this section shall report the test results to the milk plant and the department in a format and within a time period prescribed by the department.

(d) Pasteurized milk that exceeds bacterial limits.--

(1) When two or more samples of milk demonstrate a milk plant cannot produce pasteurized milk that remains consistently within the bacterial limits referenced in subsection (b) during the sell-by-date or best-by-date period, the department shall calculate a reduced sell-by-date or best-by-date period for that pasteurized milk such that bacterial growth in the milk will not exceed the referenced bacterial limits within that revised sell-by-date or best-by-date period, if the milk is maintained in accordance with the temperature standards for pasteurized milk in the department's milk sanitation regulations.

(2) The milk plant shall use the revised sell-by date or best-by date until the milk plant obtains a different sell-by-date or best-by-date period using the procedure in section 5744.

Cross References. Section 5746 is referred to in section 5744 of this title.

§ 5747. Regulations.

The department shall make such reasonable rules and regulations as may be deemed necessary for carrying out the provisions of this subchapter.

CHAPTER 59
ORGANIC FOODS
(Repealed)

2010 Repeal. Chapter 59 (§§ 5901 - 5909) was added December 12, 1994, P.L.903, No.131, and repealed November 23, 2010, P.L.1039, No.106, effective in 60 days.

CHAPTER 61
MAPLE PRODUCTS
(Repealed)

2010 Repeal. Chapter 61 (§§ 6101 - 6112) was added December 12, 1994, P.L.903, No.131, and repealed November 23, 2010, P.L.1039, No.106, effective in 60 days.

CHAPTER 65
FOOD EMPLOYEE CERTIFICATION

Sec.
6501. Short title of chapter.
6502. Definitions.
6503. Certification programs.
6504. Certification of employees.
6505. Rules and regulations.
6506. Reciprocal agreements (Repealed).
6507. Suspension of certification (Repealed).
6508. Civil penalties.
6509. Fees (Repealed).
6510. Exemptions.

Enactment. Chapter 65 was added December 12, 1994, P.L.903, No.131, effective in 90 days.

§ 6501. Short title of chapter.

This chapter shall be known and may be cited as the Food Employee Certification Act.

§ 6502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advisory board" or **"board."** (Deleted by amendment).

"Certificate." A certificate of completion issued by a certification program that has been evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

"Conference for Food Protection." An independent, national voluntary nonprofit organization to promote food safety and consumer protection. Participants in this organization include Federal, State and local regulatory agencies, universities, test providers, certifying organizations, consumer groups, food service and retail store trade associations and retail food facility operators. The objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

"Employee." As defined under section 5702 (relating to definitions).

"Food establishment." As defined in section 5722 (relating to definitions).

"Organized camp." As defined in section 5702 (relating to definitions).

"Person in charge." As defined in section 5702 (relating to definitions).

"Potentially hazardous food." As defined in section 5702 (relating to definitions).

"Proprietor." As defined in section 5702 (relating to definitions).

"Public eating or drinking place." A public eating or drinking place as defined in section 5702 (relating to definitions).

"Retail food establishment." As defined in section 5702 (relating to definitions).

"Retail food facility." A public eating or drinking place or a retail food establishment.

"Supervisory employee." (Deleted by amendment).

(Nov. 23, 2010, P.L.1039, No.106, eff. 60 days)

§ 6503. Certification programs.

(a) (Reserved).

(b) (Reserved).

(c) Certification programs.--The department shall recognize certification programs including examinations developed under those programs that are evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

(c.1) (Reserved).

(d) Certification of employees.--An employee shall be certified following demonstration of food safety protection knowledge by the successful completion of an examination conducted by or pursuant to an accredited certification program recognized by the department under subsection (c). A retail food facility shall have a period of three months after licensing under Ch. 57 Subch. A (relating to retail food facility safety) within which to comply with this chapter.

(e) Preemption.--Except as provided in subsection (f), the regulation of food safety protection and training standards for employees of retail food facilities is preempted by the Commonwealth.

(f) Local programs.--Any food employee certification program established by a county, city, borough, incorporated town or township prior to September 1, 1994, may remain in effect.

(Dec. 20, 2000, P.L.934, No.124, eff. 60 days; Dec. 9, 2002, P.L.1495, No.190, eff. imd.; Nov. 23, 2010, P.L.1039, No.106, eff. 60 days)

Cross References. Section 6503 is referred to in section 6504 of this title.

§ 6504. Certification of employees.

(a) General rule.--A retail food facility shall have at least one employee who holds a valid certificate present at the retail food facility or immediately accessible at all hours of operation and who is the person in charge of the retail food facility when physically present and on duty.

(a.1) Multiple retail food facilities.--

(1) Except as provided under paragraph (2), a person who meets the requirements of subsection (a) may only be the required certified employee for a single retail food facility.

(2) If a proprietor operates more than one retail food facility at a temporary fair, festival or other temporary event, a person who meets the requirements of subsection (a) may be the certified employee for all of those temporary retail food establishments.

(a.2) Federal recommended standards.--Notwithstanding this chapter, if, after the effective date of this subsection, the Food Code published by the United States Department of Health, Food and Drug Administration, recommends that a person in charge hold a certificate or recommends that a certificate holder with

supervisory authority be present during hours of operation at a retail food facility, the department shall, by regulation, establish this recommended standard as the standard for retail food facilities.

(b) (Reserved).

(c) Compliance.--

(1) (Reserved).

(2) A retail food facility exempt under section 6510(d) (relating to exemptions) may voluntarily seek certification under this section.

(3) Except as provided in section 6510, compliance with this chapter by a retail food facility shall be mandatory.

(d) Employee turnover.--Retail food facilities which are not in compliance because of employee turnover or other loss of certified employees shall have three months from the date of loss of certified employees to comply.

(e) Maintenance and inspection of records.--Names and certificate numbers of certified employees shall be maintained at the place of business and shall be made available to and shall be inspected by:

(1) the department for retail food facilities that are licensed under Subchapter A of Chapter 57 (relating to retail food facility safety) by the department; or

(2) the licensor for retail food facilities that are licensed under Subchapter A of Chapter 57 by a licensor that is not the department.

(f) Period of certification.--Certification shall be in effect for the certification interval prescribed by the accredited certification program described in section 6503(c) (relating to certification programs). Renewal of certification shall be based on the successful completion of the certification requirements of an accredited certification program as described in section 6503(c).

(g) (Reserved).

(h) (Reserved).

(Dec. 20, 2000, P.L.934, No.124, eff. 60 days; Dec. 9, 2002, P.L.1495, No.190, eff. imd.; Nov. 23, 2010, P.L.1039, No.106, eff. 60 days)

Cross References. Section 6504 is referred to in section 6510 of this title.

§ 6505. Rules and regulations.

The department is charged with the administration of this chapter and shall promulgate rules, regulations and standards for its proper enforcement and administration.

§ 6506. Reciprocal agreements (Repealed).

2010 Repeal. Section 6506 was repealed November 23, 2010, P.L.1039, No.106, effective in 60 days.

§ 6507. Suspension of certification (Repealed).

2010 Repeal. Section 6507 was repealed November 23, 2010, P.L.1039, No.106, effective in 60 days.

§ 6508. Civil penalties.

(a) Retail food facilities licensed by the department.--For retail food facilities licensed under Subchapter A of Chapter 57 (relating to retail food facility safety) by the department, and in addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted thereunder or any order

issued pursuant thereto, the department may assess a civil penalty not to exceed $300 for the first offense or not to exceed $1,000 for subsequent offenses upon a person or retail food facility for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing on the charge in accordance with law.

(b) Retail food facilities licensed by other licensor.--For retail food facilities licensed under Subchapter A of Chapter 57 by a licensor that is not the department, penalties under this chapter shall be established by the licensor.

(Nov. 23, 2010, P.L.1039, No.106, eff. 60 days)

§ 6509. Fees (Repealed).

2010 Repeal. Section 6509 was repealed November 23, 2010, P.L.1039, No.106, effective in 60 days.

§ 6510. Exemptions.

(a) Prepackaged food.--

(1) Retail food facilities where only commercially prepackaged food is handled and sold are exempt from this chapter.

(2) Retail food facilities that handle and sell food other than commercially prepackaged food are exempt from this chapter during time periods or work shifts when only commercially prepackaged food is sold.

(b) Nonpotentially hazardous food.--

(1) Retail food facilities that handle only nonpotentially hazardous food are exempt from this chapter.

(2) Retail food facilities that handle and sell potentially hazardous food are exempt from this chapter during time periods or work shifts when only nonpotentially hazardous food is handled and sold.

(c) Food establishments.--Food establishments are exempt from this chapter.

(d) Exempt retail food facilities.--Except as set forth in section 6504(c)(2) (relating to certification of employees), the following retail food facilities are exempt from this chapter:

(1) A retail food facility managed by an organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) A retail food facility managed on a not-for-profit basis by an organization which is a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of any of the above associations.

(3) A retail food facility managed by an organization which is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis. This paragraph does not apply to organized camps.

(Dec. 20, 2000, P.L.934, No.124, eff. 60 days; Nov. 23, 2010, P.L.1039, No.106, eff. 60 days)

Cross References. Section 6510 is referred to in section 6504 of this title.

CHAPTER 67

FERTILIZER
(Repealed)

2022 Repeal. Chapter 67 (§§ 6701 - 6725) was added December 13, 2001, P.L.876, No.97, and repealed July 11, 2022, P.L.1538, No.83, effective immediately. The subject matter is now contained in Chapter 68 of this Title.

CHAPTER 68
FERTILIZER

Sec.

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Enactment. Chapter 68 was added July 11, 2022, P.L.1538, No.83, effective immediately unless otherwise noted.

Cross References. Chapter 68 is referred to in sections 6921, 7122 of this title.

§ 6801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural operation." The management and use of farming resources for the production of crops, livestock or poultry.

"Brand." A term, design or trademark used in connection with one or several grades of fertilizer.

"Bulk fertilizer." A fertilizer distributed in a nonpackaged form.

"By-product." Municipal waste or residual waste as defined in the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, that contains a plant nutrient and meets all applicable regulations of the Department of Environmental Protection.

"Compost." Product manufactured from the controlled aerobic biological decomposition of biodegradable materials that have been sanitized through the generation of mesophilic and thermophilic heat cycles and have stabilized carbon to the point that the materials are beneficial to plant growth.

"Consumer." A person who purchases fertilizer for its end use.

"Deficiency." The amount of nutrient found by analysis to be less than that guaranteed, that may result from a lack of nutrient ingredients or uniformity.

"Department." The Department of Agriculture of the Commonwealth.

"Distribute." To import, consign, offer for sale, sell, barter or otherwise supply fertilizer in this Commonwealth.

"Distributor." A person that distributes fertilizer or fertilizer material.

"Enhanced efficiency." Relating to a fertilizer with characteristics that allow increased plant nutrient uptake and reduced potential of nutrient losses to the environment, such as gaseous losses, leaching or runoff.

"Facility." Each separate mill or plant that manufactures fertilizer.

"Fertilizer." A substance containing one or more recognized plant nutrients that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal manure and plant remains, spent mushroom substrate and compost when not used as a plant nutrient, agricultural liming materials, wood ashes and other materials exempted by the department's regulations. The term shall not apply to animal manure that is regulated under:

(1) Chapter 5 (relating to nutrient management and odor management);

(2) the act of June 28, 2004 (P.L.454, No.49), known as the Commercial Manure Hauler and Broker Certification Act; or

(3) 25 Pa. Code § 91.36(b) (relating to pollution control and prevention at agricultural operations).

"Fertilizer license." A license obtained under section 6802 (relating to licensing).

"Fertilizer material." A fertilizer that:

(1) contains only one of the following primary plant nutrients:

(i) nitrogen;

(ii) phosphate; or

(iii) potash;

(2) has at least 85% of its plant nutrient content present in the form of a single chemical compound; or

(3) is derived from a plant or animal residue, by-product, coproduct as defined in 25 Pa. Code § 287.1 (relating to definitions) or natural material deposit that has been processed in a way that the fertilizer's content of plant nutrients has not been materially changed except by purification and concentration.

"Grade." The percentage of total nitrogen, available phosphate and soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis, except that, with respect to specialty fertilizers, fertilizer

materials, bone meal, manures and similar materials may be stated in fractional units.

"Growing media." Material in which plants are grown, such as garden soil, potting soil or commercial soil-less mixes.

"Guaranteed analysis." The minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) %
Available Phosphate (P_2O_5) %
Soluble Potash (K_2O) %

For other organic phosphatic materials, the total phosphate or degree of fineness may also be guaranteed. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be established by department regulation.

"Guarantor." A person, including a manufacturer or distributor, whose name and address appear on the label of fertilizer.

"Impervious surface." A structure, surface or improvement that reduces or prevents infiltration of water into soil, including, but not limited to, concrete, asphalt, roadways, sidewalks, parking lots, driveways and patios.

"Label." The display of all written, printed or graphic matter on the immediate container or a statement accompanying a fertilizer.

"Labeling." All written, printed or graphic matter, on or accompanying fertilizer or advertisements, brochures, posters or electronic media used in promoting the distribution of fertilizer.

"Local agency." A governmental unit other than the Commonwealth. The term shall include, but not be limited to, a county, city, borough, town, township, school district or municipal authority.

"Manipulated." Processed or treated in any manner, including drying to a moisture content of less than 30%.

"Manufacture." To produce, mix, blend, repackage or further process fertilizer or fertilizer material for distribution.

"Manure." Animal excrement, with or without the bedding, litter, straw, washwater and other refuse materials, dirt and waste ordinarily mixed or commingled with that excrement, that is produced at an agricultural operation.

"Micronutrient." Any of the following:

(1) Boron.
(2) Chlorine.
(3) Cobalt.
(4) Copper.
(5) Iron.
(6) Manganese.
(7) Molybdenum.
(8) Nickel.
(9) Sodium.
(10) Zinc.

"Natural organic fertilizer." Materials that are:

(1) Derived from either plant or animal products containing one or more elements, other than carbon, hydrogen and oxygen.

(2) Essential for plant growth and subjected to biological degradation processes under normal conditions of aging, rainfall, sun curing, air drying, composting, rotting, enzymatic or anaerobic or aerobic bacterial action or any combination of these processes.

(3) Not mixed with synthetic materials or changed in any physical or chemical manner from their initial state

except when manipulated by methods such as drying, cooking, chopping, grinding, shredding, hydrolysis or pelleting.

"Net weight." The total weight of fertilizer as offered for sale, excluding the weight of the container.

"Official sample." A sample of fertilizer collected or obtained by the department or its agent to effectuate the provisions of this chapter and designated as official.

"Organic-based fertilizer." A mixed fertilizer in which:

(1) More than half of the fertilizer materials are organic.

(2) More than half of the sum of the guaranteed primary nutrient percentages are derived from organic materials.

"Overall index value." The value obtained from the calculation: (commercial value found) x 100 / (commercial value guaranteed).

"Percentage." A percentage by weight.

"Person." An individual, a partnership, an association, a firm, a corporation or another legal entity.

"Pesticide applicator." (Deleted by amendment).

"Plant nutrient." Any of the following:

(1) A primary nutrient.

(2) A secondary nutrient.

(3) A micronutrient.

"Primary nutrient." Any of the following:

(1) Nitrogen.

(2) Phosphorus.

(3) Potassium.

"Registrant." A person who registers fertilizer under this chapter.

"Repackage." The placement of fertilizer into a container or bulk bin other than what is supplied by the guarantor.

"Sanitized." A process to significantly reduce viability of pathogens and weed seeds.

"Secondary nutrient." Any of the following:

(1) Calcium.

(2) Magnesium.

(3) Sulfur.

"Specialty fertilizer." A fertilizer:

(1) distributed for use not associated with an agricultural operation; or

(2) primarily intended to supply plant nutrients other than nitrogen, phosphate or potash.

"Stream buffer zone." A permanent strip of dense perennial vegetation established parallel and immediately adjacent to the bank of a pond, wetland or flowing body of water, such as a stream, river or creek, that is used to slow water runoff, enhance water infiltration and minimize the risk of potential nutrients reaching the waters.

"Tolerance." A permitted variation from the guarantee of an official sample of fertilizer.

"Ton." A net weight of 2,000 pounds.

"Turf." Land, including, but not limited to, residential property, a golf course and privately or publicly owned land, that is planted in closely mowed, managed grass, except for land used for an agricultural operation.

(Nov. 1, 2023, P.L.146, No.20, eff. imd.)

2023 Amendment. Act 146 deleted the def. of "pesticide applicator" and added the def. of "sanitized."

§ 6802. Licensing.

(a) Requirements.--Each person engaged in the manufacture of fertilizer to be distributed in this Commonwealth and each guarantor of the fertilizer shall, on or before July 1 of each year or prior to manufacture or distribution of the fertilizer, obtain a fertilizer license for each facility located in this Commonwealth and for each guarantor by completing a form furnished by the department and paying a $50 application fee for each facility and for each guarantor. All licenses shall expire on June 30 of each year.

(b) Labeling and typical analysis.--The department may require an applicant for a fertilizer license or a current fertilizer licensee to submit the labeling that the person is using or intends to use for the fertilizer. The department may also require an applicant or fertilizer licensee to provide a typical analysis of selected components that may be in the fertilizer.

Cross References. Section 6802 is referred to in section 6801 of this title.

§ 6803. Registration of specialty fertilizers.

(a) Application.--Each brand and grade of specialty fertilizer shall be registered by the guarantor with the department before being offered for sale, sold or distributed in this Commonwealth. An application for each brand and grade of specialty fertilizer shall be made on a form furnished by the department and shall be accompanied by a fee of $100 per each grade of each brand. Labels for each brand and grade shall accompany the application. All registrations shall expire on June 30 of each year.

(b) Contents of specialty fertilizer registration application.--An application for registration shall include:

(1) The brand and grade.
(2) The guaranteed analysis.
(3) The name and address of the guarantor.
(4) The net weight.

(c) Exemption.--

(1) A distributor shall not be required to register a specialty fertilizer that is already registered under this chapter by another person, if the label does not differ in a material respect.

(2) Registration shall not be required when a fertilizer is formulated according to the specifications that are furnished by the consumer and is not further distributed or offered for sale to the general public.

(d) Late fee.--

(1) If the application for renewal of the specialty fertilizer registration required under this section is not filed prior to June 30 of each year, a penalty of $25 or 10% of the total registration fee for all products sought to be registered, whichever is greater, may be assessed and added to the original fee and shall be paid by the applicant before the renewal of the specialty fertilizer registration is issued.

(2) The penalty shall not apply if the applicant furnished an affidavit that the applicant has not distributed the specialty fertilizer subsequent to the expiration of the applicant's prior registration.

Cross References. Section 6803 is referred to in sections 6816, 6904 of this title.

§ 6804. Components of fertilizer labeled for turf.

(a) General rule.--Except as provided in subsection (b), fertilizer labeled for turf that is distributed to consumers in this Commonwealth shall:

(1) Consist of at least 20% enhanced efficiency nitrogen of the total nitrogen or as otherwise determined by the department, which determination shall be transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(2) Contain no phosphorus, unless the fertilizer is a natural organic or organic-based fertilizer.

(b) Exemptions.--

(1) Subsection (a) shall not apply when fertilizer is labeled for repairing a turf area or establishing a turf area for the first time.

(2) Subsection (a)(1) shall not apply to liquid fertilizers or readily available nitrogen fertilizers labeled for turf, if the directions for use are in accordance with the requirements of section 6813 (relating to application of fertilizer to turf).

(c) Additional requirements.--The department, through regulation, may establish additional requirements for fertilizer applied to turf.

§ 6805. Labels and labeling.

(a) Contents of label.--The guarantor of a fertilizer distributed in a container in this Commonwealth shall place on or affix to the container a label stating in legible and conspicuous form the following:

(1) The brand and grade of the fertilizer. The grade shall not be required if no primary nutrients are claimed.

(2) The guaranteed analysis.

(3) A statement of from where the material was derived.

(4) Directions for use for fertilizer distributed to the consumer.

(5) The name and address of the guarantor.

(6) The net weight.

(b) Bulk fertilizer.--In the case of bulk fertilizer distribution, the information required under subsection (a) shall accompany delivery and shall be provided in writing to the purchaser at time of delivery.

(c) Other guarantees.--Guarantees for nutrients other than primary nutrients shall be expressed in the form of the element. The department may require by regulation that other beneficial substances or compounds be guaranteed. When plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations prescribed by the department.

(d) Proof of labeling claims.--The department may require proof of labeling claims made for fertilizer. Research in support of the claims must be performed by an institution approved by the department utilizing acceptable scientific methodology.

(e) Consumer-specified fertilizer formulations.--In lieu of the requirements under subsection (a), a fertilizer formulated according to specifications that are furnished by the consumer prior to mixing shall be labeled in a clearly legible and conspicuous form to show the grade, net weight, guaranteed analysis and name and address of the guarantor.

(f) Bulk fertilizer storage.--Bulk fertilizer in bulk fertilizer storage that is intended for distribution shall be identified with a label attached to the storage bin or container giving the name and grade of the product.

(g) Turf fertilizer.--Subject to subsection (i), fertilizer intended for use on turf that is distributed to consumers in this Commonwealth, in bulk or packages that are one pound or greater, shall include a statement in legible and conspicuous form that at a minimum sets forth the following requirements:

(1) The product may not be applied near water, storm drains or drainage ditches.

(2) The product may not be applied if heavy rain is expected.

(3) The product may only be applied to the intended application site.

(4) Material that lands on an impervious surface must be swept back onto the turf. This requirement shall not apply if the product is applied in a liquid form.

(h) Nonturf fertilizer.--Subject to subsections (i) and (k), fertilizer that is not labeled for turf, in bulk or packages that are 40 pounds or greater, that is distributed to consumers in this Commonwealth, shall include a statement in legible and conspicuous form that at a minimum sets forth the following requirements:

(1) The product may not be applied near water, storm drains or drainage ditches or to any impervious surface.

(2) The product may not be applied if heavy rain is expected.

(3) The product may only be applied to the intended application site.

(i) Fertilizers containing pesticides.--In lieu of the statements required under subsections (g) and (h), the label for fertilizer products containing pesticides shall contain the environmental hazard statement recommended by the Environmental Protection Agency for that product.

(j) Minimum font size.--Statements required under subsections (g) and (h) shall be printed in a legible and conspicuous manner and may not be smaller than the height of the font used for the directions for use on the product labeling.

(k) Exemption.--The requirements of subsections (g), (h) and (j) shall not apply to fertilizer labeled for aquatic settings, growing media, indoor use or potted plants.

(l) Prohibition.--The label or labeling for fertilizer shall not include the purpose of melting snow or ice, unless the product is distributed to an airport to be used on aircraft or areas an aircraft accesses.

(m) Other label information.--The department may, by regulation, require additional information to be present on the label or labeling of fertilizers.

Effective Date. Section 4(1) of Act 83 of 2022 provided that subsecs. (a)(3) and (4), (g), (h), (i), (j), (k) and (l) shall take effect in 18 months.

Cross References. Section 6805 is referred to in sections 6810, 6816 of this title.

§ 6806. Inspection fees.

The guarantor whose name appears on the label of a fertilizer distributed in this Commonwealth shall pay semiannually and not later than January 31 and July 31 of each year an inspection fee at the rate of 17¢ per ton of fertilizer distributed in this Commonwealth. In no case shall the inspection fee paid semiannually amount to less than $25.

Cross References. Section 6806 is referred to in section 6906 of this title.

§ 6807. Tonnage reports.

(a) Requirements.--The guarantor whose name appears on a label shall submit, along with the requisite inspection fee, a report in a manner prescribed by the department listing by county the intended use and net tons of each brand and grade of fertilizer distributed in this Commonwealth for the period covered by the inspection fee. The department may promulgate regulations to establish additional tonnage reporting requirements.

(b) Multiple guarantors.--When more than one guarantor is involved in the distribution of fertilizer, the guarantor who distributed the fertilizer last shall report the tonnage and pay the inspection fee, unless the report and payment have been made by a prior distributor.

(c) Late fee.--A penalty of $25 or 10% of the total inspection fee, whichever is greater, shall be imposed for a fee or report not submitted at the required time.

(d) Examination permitted.--

(1) The department or its authorized representative may examine the records of the guarantor to verify the information contained in the reports filed with the department.

(2) Reports containing fraudulent or incorrect information shall be considered a violation of this chapter for which the department may assess a penalty as provided for in this chapter.

(e) Confidentiality of information.--

(1) Notwithstanding the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, or its successor statute, no proprietary information furnished to the department under this section shall be disclosed in a way as to knowingly or intentionally divulge a trade secret of a person subject to the provisions of this chapter.

(2) This subsection shall not apply to information furnished to a court or administrative tribunal in accordance with law.

Cross References. Section 6807 is referred to in section 6907 of this title.

§ 6808. Plant nutrient deficiency.

(a) Penalties.--The following penalties shall be assessed for deficiencies from the guaranteed analysis:

(1) A penalty payment of five times the commercial value of each deficiency shall be assessed when the analysis shows that a fertilizer is deficient if:

(i) one or more of its guaranteed primary plant nutrients is beyond a tolerance of 10% (two unit maximum); or

(ii) the overall index value of the primary nutrients in the fertilizer is below 97.

(2) When a fertilizer is subject to a penalty payment under paragraph (1)(i) and (ii), the larger penalty payment shall apply. Any penalty assessed shall not exceed the retail price of the lot of fertilizer represented by the official sample.

(3) Deficiencies beyond the tolerance as established by regulation in a component other than a primary nutrient shall be evaluated by the department and shall be subject to a penalty under this chapter.

(b) Payment of penalties.--Within 90 days following receipt of the official report of analysis, the guarantor shall pay to the consumer a deficiency penalty in the amount prescribed on

the report of analysis. Receipts of payment shall be promptly forwarded by the guarantor to the department. If the consumer cannot be found, the penalties shall be paid to the department.

(c) Deficiencies in fertilizers.--A deficiency in an official sample of fertilizer resulting from nonuniformity shall not be deemed distinguishable from a deficiency due to actual plant nutrient shortage and shall be deemed a violation of this chapter for which the department may assess a penalty as provided for in this chapter.

Cross References. Section 6808 is referred to in section 6809 of this title.

§ 6809. Commercial value.

For the purpose of determining the commercial value to be applied under section 6808 (relating to plant nutrient deficiency), the department shall determine and publish annually a notice transmitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin stating the values per pound of total nitrogen, available phosphate and soluble potash in fertilizers in this Commonwealth. The values published in the Pennsylvania Bulletin shall take effect July 1 of each year and be used in determining and assessing penalty payments.

§ 6810. Misbranding.

No person may distribute a fertilizer that is misbranded. A fertilizer shall be deemed to be misbranded if any of the following apply:

(1) Its labeling is false or misleading.

(2) It is distributed under the name of another fertilizer.

(3) It is not labeled as required in section 6805 (relating to labels and labeling) and in accordance with regulations prescribed under this chapter.

(4) It purports to be or is represented as a fertilizer or is represented as containing a plant nutrient or fertilizer, unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by regulation.

(5) The label or labeling are in conflict with section 6813 (relating to application of fertilizer to turf).

§ 6811. Adulteration.

(a) Prohibition.--No person may distribute a fertilizer that is adulterated. A fertilizer shall be deemed to be adulterated if any of the following apply:

(1) It contains a deleterious or harmful substance in any amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with its intended use or directions for use on the label.

(2) Adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown on the label.

(3) Its composition falls below or differs from that which it is purported to possess by its labeling.

(4) It contains viable weed seed or unwanted crop seed in amounts exceeding the limit that the department establishes by regulation.

(b) Exception.--A fertilizer shall not be considered adulterated under this section if the quantity of the substance in the fertilizer does not ordinarily render it injurious.

§ 6812. Application of fertilizer.

(a) Restrictions.--

(1) No person may apply nonaquatic fertilizer within 15 feet of the top of a bank of a lake, pond, wetlands or flowing body of water, such as a stream, river or creek, except that fertilizer may be applied to the top of the bank of the waterways if applied using a drop spreader, rotary spreader with deflector, targeted spray liquid or other available targeted application technology when establishing and maintaining a stream buffer zone.

(2) The establishment of setbacks for fertilizer application under this subsection shall not be construed to preclude the establishment or applicability of or required compliance with any other environmental standard established under other Federal or State law, rule or regulation.

(b) Regulation.--The department may establish additional restrictions through regulation.

(c) Construction.--Nothing in this section shall be construed to prohibit the lawful use of fertilizer in blasting as regulated by the Department of Environmental Protection.

§ 6813. Application of fertilizer to turf.

(a) Application rates.--Except as provided in subsections (c) and (d), fertilizer application rates to turf:

(1) Shall not exceed 0.7 pounds of readily available nitrogen per 1,000 square feet per application.

(2) Shall not exceed 0.9 pounds of total nitrogen per 1,000 square feet per application except, when labeled as an enhanced-efficiency nitrogen fertilizer, the amount of nitrogen released at any given time shall not exceed 0.7 pounds of nitrogen per 1,000 square feet.

(3) Shall contain zero phosphorus, except when specifically labeled for the following purposes:

(i) establishing vegetation for the first time;

(ii) reestablishing or repairing a turf area; or

(iii) as an enhanced-efficiency phosphorus fertilizer, natural organic fertilizer or organic-based fertilizer, if the application rate does not exceed 0.25 pounds of phosphorus per 1,000 square feet per application, with a maximum total annual application of 0.5 pounds of phosphorus per 1,000 square feet.

(b) Restrictions.--No person may:

(1) Apply fertilizer labeled for use on turf to an impervious surface. Fertilizer labeled for use on turf that is inadvertently applied to an impervious surface shall be removed from the impervious surface immediately following the application.

(2) Apply fertilizer containing nitrogen or phosphorus to turf at any time when the ground is frozen to a depth of at least two inches or snow covered.

(3) (Deleted by amendment).

(4) Apply fertilizer containing more than 0.5 pounds of total nitrogen per 1,000 square feet, or at a rate established in regulations promulgated by the department, to turf after December 15 and before March 1 or dates as established in regulations promulgated by the department.

(c) Fertilizer use and application rates for turf.--

(1) The department may establish use and application rates for fertilizer that is applied to turf.

(2) The current rates or source of established fertilizer use and application rates shall be published at least once every two years by the department transmitting a notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(3) New application rates or changes to established fertilizer use and application rates shall:

(i) Be based on appropriately peer-reviewed scientific research representing conditions of this Commonwealth and recommended by The Pennsylvania State University or other institution of higher education in this Commonwealth.

(ii) Be as protective or more protective of water quality as those rates specified in subsection (a).

(iii) Be published as a notice of public comment in the Pennsylvania Bulletin and allow for a 30-day public comment period. The department shall respond to all comments received and make a copy of the comments publicly available. The new rates or changes shall be published as final rates in the Pennsylvania Bulletin and take effect upon publication.

(d) Application based on soil test and site-specific plan.--A person shall not be required to follow application rates established under subsection (a) or (c) if a site-specific plan is used based on all the following:

(1) A soil test was conducted within the previous three years and in accordance with procedures recommended by The Pennsylvania State University.

(2) Current soil, plant species, climate, use, topography or other appropriate management factors.

(3) Rates recommended by The Pennsylvania State University or other institution of higher education in this Commonwealth approved by the department.

(e) (Reserved).

(f) Additional requirements.--The department may establish additional requirements through regulation.

(g) Exemption.--This section shall not apply to fertilizer applied to land used for an agricultural operation or by a public or private institution of higher education for research purposes.

(Nov. 1, 2023, P.L.146, No.20, eff. imd.)

2023 Amendment. Act 20 amended subsec. (b).

Cross References. Section 6813 is referred to in sections 6804, 6810 of this title.

§ 6814. Prohibited acts.

A person may not:

(1) Apply fertilizer with a device that is not intended for the application of fertilizer or that has not been properly calibrated.

(2) Operate fertilizer application equipment or devices in a faulty, careless or negligent manner.

(3) Dispose of, discard or store a fertilizer product in a manner that would be inconsistent with its label, would cause over-application of fertilizer, would result in direct discharge to a storm drain or waters of this Commonwealth or would be inconsistent with this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

(4) Aid or abet another person to evade the provisions of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter, conspire with another person for that purpose.

(5) Hinder, mislead, make false statements to or refuse to cooperate with an employee or agent of the department in an investigation or inspection undertaken by the authority

delegated to the department under the provisions of this chapter.

(6) Apply fertilizer for the purposes of melting snow or ice, unless the material is applied to aircraft or areas an aircraft accesses at an airport.

(7) Fail to comply with a provision of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

(8) Make a false statement or misrepresentation of material fact on an application for issuance or renewal of a license required under this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

(9) Refuse or neglect to comply with a condition or limitation imposed upon a license issued under this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

(10) Refuse to present evidence of proper licensure to an employee or agent of the department upon request.

(11) Refuse or neglect to keep and maintain a record, or make a report when and as required, by this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

§ 6815. Agricultural and homeowner education.

The department, through guidelines established in consultation with The Pennsylvania State University and representatives of the agricultural and turf grass industries, shall establish and administer a program of public outreach to educate the public on proper use, application, handling and storage of fertilizers.

§ 6816. Publications.

The department may publish on an annual basis, and in a form as it deems proper, information concerning the distribution of fertilizers and results of analyses based on official samples of fertilizer distributed within this Commonwealth as compared with analyses guaranteed under sections 6803 (relating to registration of specialty fertilizers) and 6805 (relating to labels and labeling).

§ 6817. Rules and regulations.

The department may promulgate and enforce rules and regulations necessary for administration and implementation of this chapter. Regulations currently in place shall remain in effect, to the extent they are consistent with this chapter, until such time as new regulations are promulgated by the department. The department may draft and issue such orders as are necessary to enforce and provide clarity for administration of this chapter.

§ 6818. Short weight.

If the department finds that a fertilizer in the possession of a consumer is short in weight, the guarantor of that fertilizer shall, within 30 days after official notice from the department, submit to the consumer a penalty payment of two times the value of the actual shortage.

§ 6819. Refusal, suspension or revocation of registration or license.

(a) Authority of department.--The department may refuse, suspend or revoke:

(1) the registration of a fertilizer;

(2) the license of a person, if the person is a registrant or licensee and has not complied with the provisions of this chapter, a regulation promulgated under

this chapter or an order issued under the authority of this chapter; or

(3) the license of a person, if the person has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this chapter.

(b) Hearing.--The department shall provide an opportunity for a hearing, as specified in section 6826 (relating to appeal process), to a person appealing an action of the department under this section.

§ 6820. Stop-sale orders.

(a) Authority of department.--

(1) The department may issue and enforce a written or printed stop-sale, use or removal order to the owner or custodian of a lot of fertilizer being offered or exposed for sale in violation of a provision of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

(2) Fertilizer placed under the order shall be held at a designated place approved by the department and may not be moved without written approval by the department.

(3) The order shall remain in effect until the law has been complied with and the fertilizer is released in writing by the department or the fertilizer in violation has been disposed of in a manner authorized by the department. The authorization shall be specified in writing.

(b) Release by department.--The department shall release the fertilizer held under a stop-sale order when the requirements of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter have been complied with and all costs and expenses incurred in connection with the order have been paid by the person responsible for the violation.

§ 6821. Seizure and condemnation.

Fertilizer not in compliance with the provisions of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter shall be subject to seizure and condemnation by the department, provided that in no instance shall the disposition of the fertilizer be ordered by the department without first giving the claimant an opportunity for a hearing as provided for in section 6826 (relating to appeal process) or for opportunity to apply for permission to process or relabel the fertilizer to bring it into compliance with this chapter.

§ 6822. Unlawful conduct.

It shall be unlawful for a person to fail to comply with or cause to assist in the violation of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter.

§ 6823. Inspection, sampling and analysis.

(a) Authorization.--For purposes of enforcement of this chapter, the department or its agent may enter upon any public or private premises or carriers at reasonable times, including any vehicle being used to transport or hold fertilizer, as may be necessary to determine compliance with this chapter. The department may also:

(1) Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is kept or stored.

(2) Inspect and sample lands, plants or waterways actually or reported to be exposed to fertilizers.

(3) Inspect storage or disposal areas.

(4) Inspect or investigate complaints of injury to humans, animals, plants or the environment.

(5) Sample fertilizers being manufactured, processed, packed or held for distribution, being applied or to be applied.

(6) Have access to records relating to the manufacture, distribution, sale, storage and use of fertilizer.

(b) Inspection.--

(1) The department may conduct unannounced inspections, but shall give written notice to the owner or person in charge of the facility, warehouse, establishment, premises or vehicle at the time of inspection and sampling.

(2) A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection.

(c) Samples.--If an employee conducting an inspection obtains a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the employee may, when possible, give to the owner, operator or agent in charge a receipt describing the samples obtained.

(d) Methodology.--

(1) The methods of fertilizer sampling and analysis by the department may include those methods adopted by the Association of Official Analytical Chemists International.

(2) In cases not covered by those methods or in cases where improved methods are available, the department may issue a temporary order defining the method to be utilized. The method defined in the temporary order shall be effective upon publication in the Pennsylvania Bulletin. The temporary order shall remain in effect for a period not to exceed one year, unless reissued or until the notice is promulgated as a regulation.

(e) Deficiency determination.--In determining whether a fertilizer is deficient in nutrients, the department shall be guided solely by the official sample obtained.

(f) Maintenance by official samples.--

(1) Official samples maintained by the department and that require imposition of a penalty for nutrient deficiency shall be retained for a minimum of 90 days from issuance of a fertilizer deficiency report or an official report of analysis.

(2) Upon request, the department shall furnish to the guarantor a portion of the official sample.

(3) Requests must be made within 30 days of receipt of a fertilizer deficiency report or an official report of analysis.

Cross References. Section 6823 is referred to in section 6824 of this title.

§ 6824. Interference with officer or employee of department.

(a) Interference.--A person who willfully or intentionally interferes with an employee or officer of the department in the performance of the employee's or officer's duties or activities authorized under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a term of imprisonment for not more than one year or a fine of not more than $2,500, or both.

(b) Refuse entry.--

(1) It shall be a violation of this chapter to refuse entry to a department employee or agent acting under the authority of this chapter.

(2) For purposes of this subsection, the term "refuse entry" includes any of the following:

(i) Preventing entry to the establishment or any other place or object set forth in section 6823(a) (relating to inspection, sampling and analysis).

(ii) Preventing the taking of a sample as authorized under this chapter.

(iii) Preventing access to records required under this chapter or any order issued under the authority of this chapter or regulation promulgated under this chapter.

(c) Search warrant.--

(1) The department may apply for a search warrant to any court of competent jurisdiction authorized to issue a search warrant for the purposes of conducting inspections, collecting samples or examining records of any facility, premises or vehicle in the enforcement of this chapter.

(2) The warrant shall be issued upon probable cause. It shall be sufficient probable cause to show any of the following:

(i) The department or its authorized agent has been subject to interference or refused entry as defined under subsections (a) and (b).

(ii) The department has reasonable grounds to believe that a violation of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter has occurred.

§ 6825. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, a person who violates a provision of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter:

(1) For the first offense, commits a summary offense and may, upon conviction, be sentenced for each offense to pay a fine of not less than $100 nor more than $500 and costs of prosecution or to imprisonment for a term which shall be fixed at not more than 90 days, or both.

(2) For a subsequent offense committed within three years of a prior conviction for a violation of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 nor more than $1,000 and costs of prosecution or to imprisonment for not more than two years, or both.

(b) Civil penalties.--

(1) In addition to another remedy available at law or in equity for a violation of this chapter, the department may assess a civil penalty of not less than $500 nor more than $5,000 upon a person for each violation of this chapter. The civil penalty assessed shall be payable to the department and shall be collectible in any manner provided by law for the collection of debt.

(2) No civil penalty shall be assessed unless the person assessed the penalty has been given notice and an opportunity for a hearing on the assessment in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(c) Trade secrets.--

(1) A person who to the person's own advantage uses or reveals to anyone other than the department, administrative

tribunal or a court when relevant in a judicial proceeding information acquired under the authority of this chapter concerning a method, record, formulation or process that as a trade secret is entitled to protection under the law commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $500.

(2) This subsection shall not be construed to prohibit the department from exchanging information of a regulatory nature with governmental agencies of the Federal Government, agencies of this Commonwealth or another state.

(d) Certified copy of official analysis.--In a prosecution under this chapter involving the composition of a lot of fertilizer, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(e) De minimis violations.--Nothing in this chapter shall be construed to require the department to report a violation and to institute seizure proceedings as a result of a de minimis violation of this chapter when the department concludes that the public interest will be best served by a suitable notice of warning in writing.

(f) District attorney.--A district attorney to whom a criminal violation of this chapter is reported shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

§ 6826. Appeal process.

All appeals shall be taken and hearings conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action). A person shall have 15 days to appeal an enforcement action of the department.

Cross References. Section 6826 is referred to in sections 6819, 6821 of this title.

§ 6827. Civil remedy.

(a) Office of Attorney General.--In addition to other remedies provided for in this chapter, the Office of Attorney General, at the request of the department, may initiate in Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business an action in equity for an injunction to restrain a violation of this chapter, a regulation promulgated under this chapter or an order issued under the authority of this chapter from which no timely appeal has been taken or which has been sustained on appeal.

(b) Preliminary injunctions.--In a proceeding under subsection (a), the court shall, upon motion of the Commonwealth, issue a preliminary injunction if the court finds that the defendant is engaging in conduct that causes immediate or irreparable harm to the public or has engaged in other conduct which the court has developed through case law.

(c) Bonds not required.--The Commonwealth may not be required to furnish bond or other security in connection with proceedings under this section.

(d) Civil penalties.--In addition to an injunction, the court may levy civil penalties as provided by this chapter.

§ 6828. Cooperation with other entities.

The department may cooperate with and enter into agreement with governmental agencies of the Federal Government, agencies of this Commonwealth or another state to carry out the purpose and provisions of this chapter.

§ 6829. Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of fertilizers to each other by importers, manufacturers or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of fertilizer to manufacturers or manipulators who are in compliance with the provisions of this chapter.

§ 6830. Confidentiality.

All proprietary business information contained in records, data, formulations and other information filed with or collected by the department and that relate to tonnage reports and trade secrets, such as product formulation, customer information or production methods, shall be exempt from the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and subject to inspection only upon the order of a court of competent jurisdiction. Aggregate data may be shared with other Federal, State or local agencies.

§ 6831. Disposition of funds.

Money received from license fees, registration fees, inspection fees, fines and penalties shall be paid into a special restricted account in the General Fund known as the Agronomic Regulatory Account. All money in the Agronomic Regulatory Account is appropriated on a continuing basis to the department for the purposes of this chapter and Chapters 69 (relating to soil and plant amendment) and 71 (relating to seed).

Cross References. Section 6831 is referred to in sections 6921, 7122 of this title.

§ 6832. Exclusion of local laws and regulations.

(a) Effect of chapter.--The provisions of this chapter are of Statewide concern and occupy the whole field of regulation regarding the registration, packaging, labeling, sale, transportation, distribution, use and application of fertilizers to the exclusion of all local regulations.

(b) Enforcement.--No ordinance or regulation of a local agency, political subdivision or home rule municipality may prohibit or attempt to regulate a matter relating to the registration, packaging, labeling, sale, transportation, distribution, use or application of fertilizers, if the ordinance or regulation conflicts with this chapter.

(c) Stricter requirements.--Nothing in this chapter shall be construed to prevent a political subdivision or home rule municipality from adopting and enforcing an ordinance or a regulation that is consistent with and no more stringent than the requirements of this chapter and the regulations promulgated under this chapter. No penalty shall be assessed under the local ordinance or regulation under this subsection for a violation for which a penalty has been assessed under this chapter.

CHAPTER 69
SOIL AND PLANT AMENDMENT

Sec.

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Enactment. Chapter 69 was added December 13, 2001, P.L.876, No.97, effective in 60 days.

Special Provisions in Appendix. See section 2 of Act 97 of 2001 in the appendix to this title for special provisions relating to transition provisions.

Cross References. Chapter 69 is referred to in sections 6831, 7122 of this title.

§ 6901. Short title of chapter.

This chapter shall be known and may be cited as the Soil and Plant Amendment Act.

§ 6902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Active ingredient." A soil-amending or plant-amending ingredient that is not a plant nutrient.

"Brand." The term, designation, trademark, product name or other specific designation under which individual soil amendments or plant amendments are offered for sale.

"Consumer." A person who purchases a soil amendment or plant amendment for the end use of the product.

"Department." The Department of Agriculture of the Commonwealth.

"Distribute." To import, consign, offer for sale, sell, barter or otherwise supply soil amendments and plant amendments in this Commonwealth.

"Facility." Each separate mill or plant manufacturing a soil amendment or plant amendment.

"Guarantor." The person whose name and address appears on the label of a soil amendment or plant amendment.

"Label." The display of all written, printed or graphic matter upon the immediate container or statement accompanying a soil amendment or plant amendment.

"Labeling." All written, printed or graphic matter upon or accompanying any soil amendment or plant amendment or advertisements, brochures, posters or electronic media used in promoting the distribution of such soil amendment or plant amendment.

"Manufacture." To produce, mix, blend, repackage or further process a soil amendment, plant amendment, soil-amending ingredient or plant-amending ingredient for distribution.

"Minimum percentage." That percent of soil-amending ingredient or plant-amending ingredient that must be present

in a product before the product will be accepted for registration.

"Official sample." A sample of soil amendment or plant amendment taken by the department or its agent to effect the provisions of this chapter and designated as official.

"Other ingredients." Non-soil-amending or non-plant-amending inert ingredients present in soil amendments or plant amendments.

"Person." An individual, partnership, association, firm, corporation or any other legal entity.

"Plant amendment." Any substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plants, except fertilizers, soil amendments, agricultural liming materials, unmanipulated animal and vegetable manures, pesticides and other materials which may be exempted by regulation.

"Plant-amending ingredient." A substance that will improve germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plant.

"Secretary." The Secretary of Agriculture of the Commonwealth or the secretary's designee.

"Soil amendment." Any substance which is intended to change the chemical or physical characteristics of soil. The term does not include fertilizers, agriculture liming materials, unmanipulated animal and vegetable manures, pesticides and other materials exempted by regulation.

"Soil-amending ingredient." A substance which changes the chemical or physical characteristics of soil.

"Tolerance." A permitted variation from the guarantee of an official sample of soil amendment or plant amendment.

§ 6903. Licensing.

(a) General rule.--Every person engaged in the manufacture of a soil amendment, plant amendment, soil-amending ingredient or plant-amending ingredient to be distributed in this Commonwealth and every guarantor of such products shall, on or before July 1 of each year or prior to manufacture or distribution, apply for and obtain an annual license for each guarantor and each facility located in this Commonwealth. The application for licensure must be on the form prescribed by the department and shall be accompanied by a $25 application fee. All licenses shall expire on June 30 of each year.

(b) Labeling and typical analysis.--The department may also require an applicant for a license or a current licensee to submit the labeling that the person is using or intends to use for their soil amendments or plant amendments. The department may also require an applicant or licensee to provide a typical analysis of selected components that may be in the soil amendment or plant amendment.

§ 6904. Registration.

(a) Application.--Each brand and separately identified soil amendment and plant amendment product shall be registered by the guarantor with the department before being offered for sale, sold or distributed in this Commonwealth. An application for registration shall be submitted to the department on a form prescribed by the department and shall be accompanied by a fee of $25 per product. Labels and labeling shall accompany the application. Upon approval of an application by the department, a copy of the registration shall be furnished to the applicant. All registrations shall expire on June 30 of each year.

(b) Contents of application.--An application for registration shall include:

(1) The brand name.
(2) The active ingredients:
(i) Name and percentage of soil-amending ingredients.
(ii) Name and percentage of plant-amending ingredients.
(3) The total percentage of other ingredients.
(4) The purpose of the product.
(5) The directions for application.
(6) The name and address of the guarantor.
(7) The net weight.

(c) Exemption.--

(1) A distributor shall not be required to register a brand of soil amendment or plant amendment which is already registered under this chapter by another person, providing the label does not differ in any material respect.

(2) A person shall not be required to pay the registration fee under this section if the product contains a fertilizer and is actively registered under section 6803 (relating to registration of specialty fertilizers).

(d) Minimum percentage to be established.--The department may by regulation establish the minimum percentage of soil-amending ingredients or plant-amending ingredients that must be present before a soil amendment or plant amendment may be registered and distributed.

(e) Late fee.--If the application for renewal of the soil amendment or plant amendment registration required in this section is not filed prior to June 30 of each year, a penalty of $25 or 10% of the registration fee, whichever is greater, may be assessed and added to the original fee and shall be paid by the applicant before the renewal soil amendment or plant amendment registration is issued. The penalty shall not apply if the applicant furnished an affidavit that the applicant has not distributed the soil amendment or plant amendment subsequent to the expiration of the applicant's prior registration.
(Nov. 21, 2023, P.L.179, No.30, eff. imd.)

2023 Amendment. Act 30 amended subsec. (c).

§ 6905. Labels and labeling.

(a) General rule.--Any soil amendment or plant amendment distributed in a container in this Commonwealth shall have placed on or affixed to the container a label setting forth in legible and conspicuous form:
(1) The brand name.
(2) The active ingredients:
(i) Name and percentage of soil-amending ingredient.
(ii) Name and percentage of plant-amending ingredient.
(3) The total percentage of other ingredients.
(4) The purpose of the product.
(5) The directions for application.
(6) The name and address of the guarantor.
(7) The net weight.

(b) Bulk shipments.--In the case of bulk shipments of soil or plant amendments, the information required by subsection (a) shall accompany delivery and shall be provided in writing to the purchaser at time of delivery.

(c) False or misleading information prohibited.--No information or statement shall appear on any package, label, delivery slip or advertising matter which is false or misleading to the purchaser as to the use, value, quality, analysis, type or composition of the soil amendment or plant amendment.

(d) Proof of labeling claims.--The department may require proof of any labeling claims made for a soil amendment or plant amendment. Any research in support of such claims shall be performed by an institution approved by the department utilizing acceptable scientific methodology.

(e) Ingredient identification.--When a soil-amending ingredient or plant-amending ingredient is identified on a label, it must be determinable by laboratory methods such as those set forth in section 6908(b) (relating to inspection, sampling and analysis).

(f) Volume labeling authorized.--The department may allow labeling by volume rather than weight in subsection (a). The department may allow payment of inspection fees on a calculated equivalent of volume to tons.

(g) Bulk storage.--Soil amendments and plant amendments in bulk storage intended for distribution shall be identified with a label attached to the storage bin or container giving the brand and name of the product.

Cross References. Section 6905 is referred to in section 6909 of this title.

§ 6906. Inspection fees.

(a) Amounts.--

(1) The guarantor whose name appears on the label of a soil amendment or plant amendment distributed in this Commonwealth shall pay semiannually and not later than January 31 and July 31 of each year an inspection fee at the rate of 15¢ per ton. In no case shall the inspection fee paid semiannually amount to less than $25.

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(b) Adjustment to fees by secretary.--

(1) Notwithstanding the provisions of subsection (a), if the secretary determines following notice to the registrants and licensees that moneys derived from the registration and inspection fees are either greater or less than that required to administer this chapter, the secretary may reduce or increase the inspection fee so as to maintain revenues sufficient to administer this chapter.

(2) An inspection fee so established may not be changed by more than 2¢ in one year and may not exceed 25¢ per ton.

(3) The secretary shall announce the adjustment of fees by publishing a notice in the Pennsylvania Bulletin. The adjusted fees shall take effect 60 days after publication of such notice in the Pennsylvania Bulletin.

(c) Exemption.--The guarantor shall not be required to pay an inspection fee under this section for a product that was subject to an inspection fee under section 6806 (relating to inspection fees).

(Nov. 21, 2023, P.L.179, No.30, eff. imd.)

2023 Amendment. Act 30 added subsec. (c) and deleted subsec. (a)(2) and (3).

§ 6907. Tonnage reports.

(a) General rule.--The guarantor whose name appears on the label shall submit, along with an inspection fee, a report in a manner prescribed by the department listing by county the net tons of each brand of soil amendment or plant amendment distributed in this Commonwealth for the period covered by the inspection fee.

(b) Multiple guarantors.--When more than one guarantor is involved in the distribution of a soil amendment or plant

amendment, the guarantor who distributed the soil amendment or plant amendment last shall report the tonnage and pay the inspection fee unless the report and payment have been made by a prior distributor.

(c) Late fee.--A penalty of $25 or 10% of the inspection fee, whichever is greater, shall be imposed for any fee or report not submitted at the required time.

(d) Examination permitted.--The department or its authorized representative may examine the records of the guarantor to verify the information contained in the reports filed with the department. Reports containing fraudulent or incorrect information shall be considered a violation of this chapter for which the department may assess a penalty.

(e) Confidentiality of information.--

(1) No proprietary information furnished to the department under this section shall be disclosed in such a way as to knowingly or intentionally divulge a trade secret of any person subject to the provisions of this chapter.

(2) This subsection shall not apply to information furnished to a court or administrative tribunal in accordance with law.

(f) Exemption.--The guarantor shall not be required to report tonnage under this section for a product that was reported under section 6807 (relating to tonnage reports).
(Nov. 21, 2023, P.L.179, No.30, eff. imd.)

2023 Amendment. Act 30 added subsec. (f).

§ 6908. Inspection, sampling and analysis.

(a) General rule.--The department shall sample, inspect, make analysis of and test soil amendments and plant amendments distributed within this Commonwealth and shall inspect the storage of soil amendments and plant amendments at any time and place and to such an extent as the department may deem necessary to determine whether such soil amendments and plant amendments are in compliance with the provisions of this chapter. The department or its agent may enter upon any public or private premises or carriers during regular business hours in order to have access to soil amendments and plant amendments subject to provisions of this chapter and the records relating to this chapter.

(b) Laboratory methodology.--The department shall establish by regulation the methods of soil and plant amendment sampling and analysis. In promulgating such regulations, the department shall consider methods such as those adopted by the Association of Official Analytical Chemists International. In cases not covered by such methods or in cases where improved methods are available, the department may issue a temporary order defining the method to be utilized. The method defined in the temporary order shall be effective upon publication in the Pennsylvania Bulletin. The temporary order shall remain in effect for a period not to exceed one year unless reissued or until such order is promulgated as a regulation.

(c) Deficiency determination.--The department, in determining whether any soil amendment or plant amendment is deficient, shall be guided solely by the official sample obtained and analyzed as provided for in subsections (a) and (b).

(d) Retention of official samples.--Official samples maintained by the department and that require imposition of a penalty shall be retained for a minimum of 90 days from issuance of the penalty report. Upon request, the department shall furnish to the guarantor a portion of any sample found subject

to penalty or other legal action. Such requests must be made within 30 days of notification of sample violations.

Cross References. Section 6908 is referred to in section 6905 of this title.

§ 6909. Misbranding.

No person shall distribute a misbranded soil amendment or plant amendment. A soil amendment or plant amendment shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular manner;

(2) it is distributed under the name of another soil amendment or plant amendment product;

(3) it is not labeled as required in section 6905 (relating to labels and labeling) and in accordance with regulations prescribed under this chapter;

(4) it purports to be or is represented as a soil amendment or plant amendment or is represented as containing a soil amendment or plant amendment unless such soil amendment or plant amendment conforms to the definition of identity, if any, prescribed by regulation of the department; or

(5) it does not conform to ingredient form, minimums, labeling and tolerances prescribed by regulation.

§ 6910. Adulteration.

(a) General rule.--No person shall distribute an adulterated soil amendment or plant amendment product. A soil amendment or plant amendment shall be deemed to be adulterated if:

(1) it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with its intended use or directions for use on the label;

(2) adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown upon the label;

(3) its composition falls below or differs from that which it is purported to possess by its labeling; or

(4) it contains viable weed seed in amounts exceeding the limits which the department establishes by regulation.

(b) Exception.--A soil amendment or plant amendment shall not be considered adulterated under this section if the quantity of the substance in the soil amendment or plant amendment does not ordinarily render it injurious.

§ 6911. Short weight.

If any soil amendment or plant amendment in the possession of a consumer is found by the department to be short in weight, the guarantor of that soil amendment or plant amendment shall, within 30 days after official notice from the department, submit to the consumer a penalty payment of two times the value of the actual shortage.

§ 6912. Refusal, suspension or revocation of registration or license.

The department may refuse, suspend or revoke the registration of any soil amendment or plant amendment or refuse, suspend or revoke the license of any person where the registrant or licensee has not complied with the provisions of this chapter or of any person who has used fraudulent or deceptive practices in the evasion of the provisions of this chapter.

§ 6913. Stop-sale orders.

(a) General rule.--The department may issue and enforce a written or printed stop-sale, use or removal order to the owner or custodian of any lot of soil amendment or plant amendment and to hold at a designated place when the department finds the soil amendment or plant amendment is being offered or exposed for sale in violation of any of the provisions of this chapter. The order shall remain in effect until the law has been complied with and the soil amendment or plant amendment is released in writing by the department or the violation has been otherwise legally disposed of by written authority.

(b) Release by department.--The department shall release the soil amendment or plant amendment held under a stop-sale order when the requirements of the provisions of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid by the person responsible for the violation.

§ 6914. Seizure and condemnation.

A lot of soil amendment or plant amendment not in compliance with the provisions of this chapter shall be subject to seizure and condemnation by the department, provided that in no instance shall the disposition of the soil amendment or plant amendment be ordered by the department without first giving the claimant an opportunity for a hearing as provided for in section 6915 (relating to appeal process) or for opportunity to apply for permission to process or relabel the soil amendment or plant amendment to bring it into compliance with this chapter.

§ 6915. Appeal process.

All appeals shall be taken and hearings conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

Cross References. Section 6915 is referred to in section 6914 of this title.

§ 6916. Cooperation with other entities.

The department may cooperate with and enter into an agreement with governmental agencies of the Federal Government, agencies of this Commonwealth and any other state in order to carry out the purpose and provisions of this chapter.

§ 6917. Rules and regulations.

The department shall promulgate and enforce rules and regulations necessary for administration and implementation of this chapter.

§ 6918. Unlawful conduct.

It shall be unlawful for any person to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter.

§ 6919. Interference with officer or employee of department.

A person who willfully or intentionally interferes with an employee or officer of the department in the performance of that employee's or officer's duties or activities authorized under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a term of imprisonment of not more than one year or a fine of not more than $2,500, or both.

§ 6920. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, any person who violates any of the provisions of this chapter or a rule or regulation adopted thereunder or any order issued pursuant thereto:

(1) For the first offense, commits a summary offense and shall, upon conviction, be sentenced for each offense to pay a fine of not less than $50 nor more than $100 and costs of prosecution or to serve a term of imprisonment for not more than 90 days, or both.

(2) For a subsequent offense committed within three years of a prior conviction for any violation of this chapter or any rule, regulation or order made under this chapter, commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 nor more than $1,000 and costs of prosecution or to serve a term of imprisonment for not more than two years, or both.

(b) Trade secrets.--

(1) Any person who uses to that person's own advantage or reveals to anyone other than the department, administrative tribunal or the courts when relevant in any judicial proceeding any information acquired under the authority of this chapter concerning any method, records, formulations or processes which as a trade secret is entitled to protection under the law commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 or to serve a term of imprisonment for not less than one year, or both.

(2) This subsection shall not be construed to prohibit the department from exchanging information of a regulatory nature with governmental agencies of the Federal Government, agencies of this Commonwealth or any other state in order to implement the purpose and provisions of this chapter.

(c) Civil penalties.--

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of this chapter, the department may assess a civil penalty of not more than $2,500 upon any person for each violation of this chapter. The civil penalty assessed shall be payable to the department and shall be collectible in any manner provided by law for the collection of debt.

(2) No civil penalty shall be assessed unless the person assessed the penalty has been given notice and opportunity for a hearing on the penalty assessment in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(d) Certified copy of official analysis.--In prosecutions under this chapter involving the composition of a lot of soil amendment or plant amendment, a certified copy of the official analysis signed by the secretary or the secretary's designee shall be accepted as prima facie evidence of the composition.

(e) De minimis violations.--Nothing in this chapter shall be construed as requiring the department to report a violation and to institute seizure proceedings as a result of a de minimis violation of this chapter when the department concludes that the public interest will be best served by a suitable notice of warning in writing.

§ 6921. Disposition of funds.

Moneys received from license fees, registration fees, inspection fees, fines and penalties shall be paid into the Agronomic Regulatory Account established in section 6831 (relating to disposition of funds). All moneys in the Agronomic Regulatory Account are hereby appropriated to the department for the purposes of this chapter, Chapter 68 (relating to

fertilizer), Chapter 71 (relating to seed) and the promotion of soil health improvement practices generally.
(July 11, 2022, P.L.1538, No.83, eff. imd.; Nov. 21, 2023, P.L.179, No.30, eff. imd.)

CHAPTER 71
SEED

Sec.

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Enactment. Chapter 71 was added November 29, 2004, P.L.1302, No.164, effective in 60 days.

Partial Repeal. Section 3(3) of Act 46 of 2017 provided that Chapter 71 is repealed insofar as it is inconsistent with the addition of Chapter 15.

Special Provisions in Appendix. See section 3 of Act 164 of 2004 in the appendix to this title for special provisions relating to continuation of regulations.

Cross References. Chapter 71 is referred to in sections 703, 1520, 6831, 6921 of this title.

§ 7101. Short title of chapter.

This chapter shall be known and may be cited as the Seed Act.

§ 7102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advertisement." All representations other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

"Agent," "inspector" or "deputy." Any person duly authorized or appointed by the Secretary of Agriculture to act as the representative of the Department of Agriculture in carrying out any of the provisions of this chapter.

"Agricultural seeds." The term includes the seeds of grass, forage, cereal, oil and fiber crops and any other kinds of seeds commonly recognized within this Commonwealth as agricultural seeds and mixtures of such seeds.

"Blend." Seed consisting of more than one variety of a kind, each in excess of 5% by weight of the whole.

"Certified seed." Any seeds, including seed potatoes, agricultural, vegetable and such other seeds and plants, which have been inspected and tested during their period of growth and conditioning by a recognized seed-certifying agency and found to conform to the requirements of the laws and regulations governing seed certification in this Commonwealth or any other state.

"Certifying agency."

(1) An agency authorized under the laws of a state, territory or possession to officially certify seed; or

(2) an agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under paragraph (1).

"Complete record." Any and all records and required labeling information which relates to each lot of seed, including agricultural, vegetable, flower, tree or shrub seed, sold, distributed or stored in this Commonwealth. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests and examinations.

"Conditioning." The processing, cleaning, blending or other operations which would change the purity or germination of the seeds.

"Department." The Department of Agriculture of the Commonwealth.

"Distribution." The importing, consigning, offering for sale, selling, bartering or otherwise supplying seed in this Commonwealth.

"Distributor." The person whose name appears on the label of seed.

"Flower seeds." The term includes seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts and commonly known and sold under the name of flower or wildflower seeds in this Commonwealth.

"Germination" or **"germ."** The emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

"Hard seeds." Seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

"Hybrid." The first generation seed of a cross produced by controlling the pollination and by combining two or more inbred lines, one inbred or a single cross with an open-pollinated variety or two varieties or species, except open-pollinated varieties of corn. The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names. The term "cross" means the union of two varieties of the same species. The term "inbred line" means a relatively homozygous line produced by inbreeding and selection.

"Inert matter." All matter not seed, which includes broken seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rule.

"Kind." One or more related species or subspecies which singly or collectively are known by one common name, for example, corn, oats, alfalfa and timothy.

"Label." The display of all written, printed or graphic matter upon the immediate container or a statement accompanying the seed.

"Labeling." All written, printed or graphic matter upon or accompanying any seed or advertisements, brochures, posters or electronic media used in promoting the distribution of seed.

"Lot." A definite quantity of seed identified by a lot number or mark, every portion or bag of which is uniform for the factors which appear in the labeling within permitted tolerances.

"Mixture," "mixed" or "mix." Seeds consisting of more than one kind when each is present in excess of 5% of the whole.

"Mulch." A protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds and the prevention of erosion.

"Other crop seed." Seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

"Person." An individual, partnership, association, firm, corporation or any other legal entity.

"Prohibited noxious weed seeds." The seeds of perennial weeds that reproduce by seed and also those that spread by underground roots, stems and other reproductive parts and which, when well established, are highly destructive and difficult to control in this Commonwealth by ordinary good cultural practice.

"Pure seed." Seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods established by regulation.

"Record." The term includes all information relating to the shipment or shipments involved and includes a file sample of each lot of seed.

"Relabeling sticker." An adhesive sticker printed with the germination test date, lot number matching the lot number on the original label and a sell-by date, if required.

"Restricted noxious weed seeds." The seeds of such weeds as are very objectionable in fields, lawns and gardens of this Commonwealth but can be controlled by good cultural practices.

"Secretary." The Secretary of Agriculture of the Commonwealth or the secretary's designee.

"Seed potatoes." The tubers of the Irish potato which are grown and intended to be used as seed.

"Stop-sale." The term includes any written or printed notices given or issued by the Secretary of Agriculture or his agent to the owner or custodian of any lot of seeds in this Commonwealth directing such owner or custodian not to sell, offer or expose for sale or move such seeds within or out of this Commonwealth until the requirements of this chapter, and the regulations promulgated under authority of this chapter, shall have been complied with and a written release has been issued.

"Tolerance." A permitted variation from the seed analysis stated on the label.

"Treated." Seed that has received an application of a substance, or seed that has been subjected to a process, for which a claim is made.

"Tree and shrub seeds." The term includes seeds of woody plants commonly known and sold as tree or shrub seeds in this Commonwealth.

"Type." A group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

"Undesirable grass seeds." Seeds of grass species declared to be restricted noxious weed seed when found in lawn and turf seed and mixtures and blends thereof.

"Variety." A subdivision of a kind characterized by growth, yield, plant, fruit, seed or other characteristics by which it can be differentiated from other plants of the same kind.

"Vegetable seeds." The term includes the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable or herb seeds in this Commonwealth.

"Vegetatively propagated." Sod pieces or the stolons or rhizomes of the creeping bent grass species (Agrostis palustris), or prenuclear seed potatoes, or tree or shrub plant parts intended for vegetative reproduction, or whole plants propagated vegetatively or grown from certified seed, or other crop species as may be designated by the Secretary of Agriculture.

"Weed seeds." The term includes the seeds of all plants generally recognized as weeds within this Commonwealth and includes the prohibited and restricted noxious weed seeds.

Cross References. Section 7102 is referred to in section 7110 of this title.

§ 7103. Licensing.

(a) General rule.--Every person functioning as a distributor of seed in this Commonwealth shall, on or before January 1 of each year or prior to distribution, apply for and obtain an annual license for each legal entity. Each distributor shall complete a form furnished by the department and pay a $25 application fee. All licenses shall expire on December 31 of each year.

(b) Labeling.--The department may require an applicant for a license or a current licensee to submit the labeling that the person is using or intends to use for the seed.

§ 7104. Labels and labeling.

(a) General rule.--It shall be unlawful to sell, offer for sale, expose for sale or transport any seed subject to the provisions of this chapter for seeding purposes in bulk, packages or containers unless the package or container in which the same shall be exposed or offered for sale or transported shall have attached thereto, in a conspicuous place on the exterior thereof, a tag or label on which shall be plainly and legibly written or printed in English the following information relating to the seed:

(1) The name and address of the distributor who labeled the seed.

(2) A treatment statement as prescribed by the secretary in the regulations.

(3) The calendar month and year the germination test was completed. Unless otherwise stated in this section or section 7105 (relating to unlawful seed sales), the test to determine germination shall have been completed within a nine-month period exclusive of the calendar month in which the test was completed.

(b) Specific types of seed.--In addition to the information required in subsection (a), specific types of seeds shall be labeled with the following information:

(1) For agricultural seeds except for cool season lawn and turf grass seed and mixtures and blends thereof as provided in paragraph (2):

(i) Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of 5% of the whole and the percentage by weight of each in the order of its predominance or as the secretary may direct. Where more than one component is required to be named, the word "mixture," "mix," "mixed" or "blend" shall be shown conspicuously on the label.

(ii) Lot number.

(iii) Country and state of origin of certified seed and agency responsible for its certification.

(iv) Country and state of origin of alfalfa, bird's-foot trefoil, red and white clovers and field corn except hybrid corn. If the origin is unknown, that fact shall be so stated.

(v) Percentage by weight of all weed seeds.

(vi) The name and number of restricted noxious weed seeds or number of bulblets per pound.

(vii) Percentage by weight of agricultural seeds, other than those required to be named on the label, which may be designated as crop seeds.

(viii) Percentage by weight of inert matter.

(ix) For each named agricultural seed:

(A) The percentage of germination, exclusive of hard seed.

(B) The percentage of hard seed, if present.

(C) The calendar month and year the test was completed to determine such percentages.

The additional statement "total germination and hard seeds" may be stated after the foregoing, if desired.

(2) For cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, Chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, creeping bent grass, colonial bent grass and mixtures and blends thereof:

(i) For single kinds, the name of the kind or kind and variety.

(ii) For mixtures and/or blends:

(A) The word "mix," "mixed," "mixture" or "blend" shall be stated with the name of the mixture or blend.

(B) The heading "pure seed" and "germination" or "germ" shall be used in proper places.

(C) Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of 5% of the whole and the percentage by weight of pure seed in order of predominance and in columnar form.

(D) Percentage by weight of agricultural seeds, other than those required to be named on the label, which shall be designated as crop seed.

(E) The percentage by weight of inert matter for lawn and turf grass not to exceed 10%, except that 15% inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material other than material used for coating, pelleting as in paragraph (7) or combination products as in paragraph (6) to enhance the planting value, not common to grass seed, may not be added.

(F) Percentage by weight of all weed seeds. Maximum weed seed content not to exceed 1% by weight.

(G) Restricted noxious weed seed and undesirable grass seed that are required to be labeled will be listed under the heading "noxious weed seeds" or "undesirable grass seeds." Restricted noxious weed seeds may not exceed the standard established by regulation. Undesirable grass seeds may not exceed 0.50% of the labeled weight.

(H) For each seed identified under subparagraph (i) or this clause:

(I) Percentage of germination, exclusive of hard seed.

(II) Percentage of hard seed, if present.

(III) Calendar month and year the test was completed to determine such percentages. The oldest test date shall be used.

(IV) The statement "Sell by " which may be no more than 15 months from the date of test, exclusive of the month of test.

(3) For tree and shrub seeds:

(i) Common name of the kind of seed.

(ii) The scientific name of the genus and species to which the kind belongs and, for those kinds which belong to subspecies, the name of the subspecies.

(iii) Lot number.

(iv) The specific locality (state and county in the United States or nearest equivalent political unit in the case of foreign countries) in which seed was collected.

(v) The elevation for forest tree seeds to the nearest 500 feet above sea level at which the seed was collected.

(vi) The calendar year in which the seed was collected.

(vii) For those kinds of seed for which standard testing procedures are prescribed:

(A) Percentage by weight of pure seed.

(B) Percentage germination exclusive of hard seed.

(C) Percentage hard seed, if present.

(D) Calendar month and year the test was completed to determine such percentage.

(4) For vegetable seeds:

(i) Name of kind and variety of seed.

(ii) Lot number, which shall be on each container.

(iii) Name and number per pound of restricted noxious weed seeds present.

(iv) For seeds which germinate less than the standard last established by the secretary under this chapter:

(A) Percentage of germination, exclusive of hard seed.

(B) Percentage of hard seed, if present.

(C) The calendar month and year the test was completed to determine such percentages.

(D) The words "below standard" in not less than eight-point type.

(v) Percentage of germination:

(A) In containers of one pound or less, the calendar month and year the germination test was completed and the statement "Sell by ,"

which may be no more than 12 months from the date of test, exclusive of the month of test, or the percentage of germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months, exclusive of the month of test.

(B) In containers of more than one pound:

(I) The percentage of germination, exclusive of hard seed.

(II) The percentage of hard seed, if present.

(III) The calendar month and year the test was completed to determine such percentages.

(vi) For seeds placed in germination medium, mat, tape or other device in such a way to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape or other device, a statement to indicate the minimum number of seeds in the container.

(5) For flower seeds:

(i) The name of the kind and variety or a statement of type and performance characteristic as prescribed by the secretary in the regulations.

(ii) Lot number, which shall be on each container.

(iii) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the standard last established by the secretary under this chapter:

(A) Percentage of germination, exclusive of hard seed.

(B) Percentage of hard seed, if present.

(C) The words "below standard" in not less than eight-point type.

(D) Calendar month and year the test was completed to determine such percentage.

(iv) For flower seeds in packets as prepared for use in home flower gardens or household plantings or flower seeds in preplanted containers, mats, tapes or other planting devices:

(A) The calendar month and year the germination test was completed and the statement "Sell by ," which may be no more than 12 months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months, exclusive of the month of test.

(B) For seeds placed in a germination medium, mat, tape or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(v) For those kinds of seeds for which standard testing procedures are prescribed and weighing more than one ounce in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes or other planting devices:

(A) The percentage of germination, exclusive of hard seed.

(B) The percentage of hard seed, if present.

(C) The calendar month and year the test was completed to determine such percentage.

(6) For agricultural, lawn or turf seeds combined with mulch, with or without fertilizer, in addition to the other label requirements for agricultural, lawn and turf seeds set forth in this section:

(i) The word "combination" followed by the applicable words "mulch-seed-fertilizer" or "mulch-seed" must appear on the upper 30% of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch-seed-fertilizer" or "mulch-seed" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination."

(ii) Combination products shall contain a minimum of 70% mulch.

(iii) Agricultural, lawn or turf seeds placed in a germination medium, mat, tape or other device or mixed with mulch shall be labeled as follows:

(A) Percentage by weight of pure seed of each kind and variety named which may be less than 5% of the whole.

(B) Percentage by weight of inert matter, which shall not be less than 70% mulch.

(7) For agricultural seeds that are coated, in addition to the other label requirements for agricultural seeds set forth in this section:

(i) Percentage by weight of pure seeds with coating material removed.

(ii) Percentage by weight of coating material.

(iii) Percentage by weight of inert material exclusive of coating material.

(iv) Percentage of germination is to be determined on 400 pellets with or without seeds.

(c) Construction of section.--The provisions of this section shall not be construed to prohibit the sale in smaller units by a retailer to the ultimate user when such sales are made from packages or containers bearing the information required by this section.

Cross References. Section 7104 is referred to in sections 7105, 7106, 7107 of this title.

§ 7105. Unlawful seed sales.

It shall be unlawful for any person to sell, offer for sale or expose for sale in this Commonwealth any seed subject to the provisions of this chapter when:

(1) The distributor whose name appears on the label is not duly licensed under the provisions of this chapter.

(2) The test to determine the percentage of germination has not been completed within the time frames established by section 7104 (relating to labels and labeling), exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation. Except as otherwise stipulated in section 7104 and for seed in hermetically sealed containers as provided for in the regulations, no more than a 36-month period shall have elapsed, exclusive of the calendar month in which the test was completed.

(3) The seed contains prohibited noxious weed seeds.

(4) The seed contains restricted noxious weed seeds in excess of established maximum.

(5) The seed contains weed seeds collectively in excess of one percent by weight.

(6) Not labeled in accordance with the provisions of this chapter or having false or misleading labeling.

(7) False or misleading advertisement has been used.

(8) Any label, labeling, advertising or other representations subject to this chapter represents the seed to be certified or registered seed and:

(i) it has not been determined by a seed-certifying agency that such seed was produced, processed and packaged and conforms to standards in compliance with rules and regulations of such agency pertaining to such seed; and

(ii) the seed does not bear an official label issued for such seed by a seed-certifying agency stating that the seed is certified or registered.

(9) Labeled with a variety name but not certified by an official seed-certifying agency when it is a variety for which an application for certificate or a United States certificate of plant variety protection under the Plant Variety Protection Act (Public Law 91-577, 7 U.S.C. § 2321 et seq.) specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety.

Cross References. Section 7105 is referred to in section 7104 of this title.

§ 7106. Other unlawful acts.

It shall be unlawful for any person selling, offering or exposing seed for sale within this Commonwealth to:

(1) Detach, alter, deface or destroy any label provided for in this chapter or in the rules and regulations made and promulgated thereunder or to alter or substitute seed in a manner that may defeat the purposes of this chapter or conflict with the label.

(2) Disseminate any false or misleading advertisement or labeling concerning any seed subject to the provisions of this chapter in any manner or by any means.

(3) Hinder or obstruct in any way any authorized person in the performance of his duties under this chapter.

(4) Fail to comply with a stop-sale order.

(5) Offer or expose for sale any seed labeled with a test date (month and year) that does not agree with the actual date the test was performed.

(6) Use relabeling stickers without having both the calendar month and year the germination test was completed, the sell-by date as stated in section 7104 (relating to labels and labeling) and the lot number that matches the existing, original lot number. Relabeling of a seed lot using stickers may not occur more than once.

(7) Fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter.

§ 7107. Nonseeding and conditioning seed.

The provisions of section 7104 (relating to labels and labeling) shall not apply to potatoes or grain not intended for seeding purposes or to seed in storage in or being transported

or consigned to a seed cleaning or conditioning establishment for cleaning or conditioning if:

(1) the invoice or labeling accompanying any shipment of the seed bears the statement "seed for conditioning"; and

(2) any labeling, advertisement or other representation which may be made with respect to such unclean or unprocessed seed complies with the provisions of this chapter.

§ 7108. Certification and inspection of crops.

Any grower of potatoes, agricultural, vegetable, tree and shrub seeds or plants vegetatively propagated and located in this Commonwealth may make application to the department for inspection and certification of his crop for seed or propagation purposes under such rules and regulations as the department may issue. The department or its authorized agents shall issue such certificates of inspection and designate or provide such official tags for marking containers of "certified seed" or "certified planting material" and establish such standards of grade and quality as are necessary to safeguard the privileges and services provided for in this chapter.

§ 7109. Fees.

(a) Inspections and tests.--The department shall have authority to fix, adjust, assess and collect, or cause to be collected, fees for the certification inspection service and requested seed tests authorized by this chapter. Such fees shall be large enough to meet the reasonable expenses incurred by the department or its agents in making such inspections as may be necessary for seed certification and conducting requested tests.

(b) Service samples.--

(1) The testing fee may be required to accompany the sample.

(2) Fees shall be paid by check or money order made payable to the Commonwealth of Pennsylvania.

(3) There shall be a $5 late fee assessed for every month that the testing fee is past due.

(4) A Pennsylvania Noxious Weed Seed Examination shall be included with all purity analyses.

(5) Service Sample Fees.

Kind of Seed	Purity Analysis (including Pennsylvania State Noxious Weed Seed Examination)	Germination Test	Combined Purity Analysis and Germination Test
Alfalfa	$7.00	$5.50	$12.00
Barley	7.00	5.50	12.00
Beans, garden	6.00	6.50	12.00
Beans, Lima	6.00	7.50	13.00
Bent grass	14.00	8.00	21.50
Bluestems	26.00	8.00	33.50
Bird's-foot trefoil	7.00	5.50	12.00
Bluegrass	15.00	8.00	22.50
Bromegrass	10.00	7.50	17.00
Buckwheat	7.00	5.50	12.00
Clovers	7.00	5.50	12.00
Corn	5.00	6.50	11.00
Crown vetch	8.00	6.50	14.00
Deer's-tongue grass	10.00	7.50	17.00
Fescues	10.00	7.50	17.00
Flat pea	6.00	7.50	13.00
Millets	8.50	6.50	14.50

Oats (including fluorescence test)	8.00	5.50	13.00
Orchard grass	12.00	7.00	18.50
Peas	5.00	6.50	11.00
Redtop	14.00	8.00	21.50
Reed Canary grass	9.00	6.50	15.00
Rye	7.00	5.50	12.00
Ryegrass	9.00	6.00	14.50
Ryegrass (including fluorescence test)	9.00	10.50	19.00
Sorghums	8.00	6.50	14.00
Soybeans	6.00	7.50	13.00
Sudan grass	8.00	6.50	14.00
Timothy	7.00	5.50	12.00
Tobacco	8.00	6.50	14.00
Vetch	8.00	6.50	14.00
Wheat	7.00	5.50	12.00
Flowers	8.00	6.50	14.00
Vegetables and herbs except beans, corn and peas	8.00	5.50	13.00
Tree, forb and shrub:			
without embryo excision	8.00	9.00	16.50
with embryo excision	8.00	20.00	27.00
with embryo excision and removal of pits	8.00	22.00	29.00
Mixtures:			
Lawn and turf:			
Two components	22.00	16.00	36.00
Each additional component	8.00	8.00	15.00
Germination only		8.00 extra	
Pasture, hay and conservation:			
Two components	12.00	14.00	25.00
Each additional component	5.00	7.00	11.00
Germination only		6.00 extra	
Miscellaneous charges:			
Interstate noxious weed examinations:			
Lawn and turf with purity		6.00 extra	
Lawn and turf without purity		20.00	
All others with purity		5.00 extra	
Pennsylvania Noxious Weed			

Seed Examination:	
Lawn and turf grasses and mixtures	15.00
All others	4.00
Cold test	10.00
Canada standards test	10.00
Identification	5.00
Embryo excision test	15.00
Rush	10.00
Extra laboratory report	2.00
Tests not listed, special procedures, extra time, etc.	20.00 per hour

(c) Seed certification.--

(1) The department will provide annually a schedule listing application, inspection, tag and label fees.

(2) An applicant shall include the appropriate application fee payment for each crop. Fees shall be paid by check or money order made payable to the Commonwealth of Pennsylvania. Fees are nonrefundable.

(3) The field inspection fee is based on the total acres inspected or, in the case of grass and legumes, the pounds of clean seed produced. An invoice stating the amount of the fee will be sent to the applicant.

(4) Acreage or plants withdrawn by the applicant prior to the actual inspection may not be included except as provided for in regulation.

(5) Application and inspection fees.

Crop	Application Fee	Inspection Fee
Potatoes (other than pronuclear seed potatoes)	$25.00	$10 per acre
Prenuclear seed potatoes (greenhouse)	25.00	15¢ per sq. ft., assessed once per crop
Prenuclear seed potatoes (laboratory)	25.00	$50 assessed annually
Tobacco	25.00	$50 (minimum)
Winter barley, wheat, rye	25.00	$3 per acre
Hybrid field corn	25.00	$7 per acre
Spring barley, oats	25.00	$3 per acre
Soybean	25.00	$3 per acre
Grass, legume	25.00	4¢ per pound production fee; any field inspection $3 per acre
Turfgrass sod	25.00	$4 per acre (preplant inspection) $7 per acre (final inspection)
Trees	25.00	Fees based on the actual administrative costs incurred by

the department

(6) Tag and label fees.

	Tag	Label
Pennsylvania certified seed	10¢	10¢
Interagency certified seed	15¢	15¢
Pennsylvania certified sod		20¢
Pennsylvania certified seed potatoes	10¢	

(7) There is a $25 per lot fee for each official interagency sample received.

(8) The shipping inspection fee for potatoes is $30 per inspection.

(d) Adjustment of fee.--If the secretary determines following notice to the licensees that moneys derived from the registration and inspection fees are either greater or less than that required to administer this chapter, the secretary may reduce or increase the inspection fee so as to maintain revenues sufficient to administer this chapter.

(e) Notice.--The secretary shall announce the adjustment of fees by publishing a notice in the Pennsylvania Bulletin. The adjusted fees shall take effect 60 days after publication of such notice in the Pennsylvania Bulletin.

§ 7110. Prohibited use of the term "certified."

It shall be a violation of this chapter to use the term "certified," or any form or modification of this term which tends to convey to the purchaser of such seed or planting material for vegetative propagation that the same has been certified as defined in section 7102 (relating to definitions), on labels, labeling or containers, either orally or in writing, or in advertising material intended to promote the sale of seed potatoes or agricultural or vegetable seeds or planting material for vegetative propagation or tree and shrub seed or on labels or containers, unless these have been inspected and certified under the provisions of this chapter.

§ 7111. Powers and duties of secretary and department.

(a) General rule.--The department is hereby authorized and empowered to enforce all the provisions of this chapter and shall have power to prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances and orders as in the judgment of the secretary shall be necessary to carry out the provisions of this chapter.

(b) Powers and duties of department.--The department, in carrying out the provisions of this chapter, shall have the authority to:

(1) Enter upon any public or private premises or carriers during regular business hours in order to have access to seed subject to provisions of this chapter and the records relating to this chapter.

(2) Sample, inspect, make analysis of and test seeds subject to the provisions of this chapter that are transported, sold, offered or exposed for sale within this Commonwealth, at such time and place and to such extent as may be deemed necessary to determine whether the seeds are in compliance with the provisions of this chapter.

(3) Issue and enforce a written or printed stop-sale order to the distributor, owner or custodian of any lot of seed which may be found in violation of any of the provisions of this chapter in order to prohibit further sale of such seed until the department has determined this chapter has been complied with. With respect to seeds which have been subject to a stop-sale order as provided in this paragraph, the distributor, owner or custodian of such seeds shall have

the right to appeal as provided for in section 7115 (relating to appeal process).

(4) Upon request by the distributor, owner or custodian of seeds held under a stop-sale order, issue a written permit for the sale of such seeds for feed or for the purpose of conditioning.

(5) Establish and maintain seed testing facilities, to employ qualified persons and to incur such expenses as may be necessary to carry out the provisions of this chapter.

(6) Make purity and germination tests of seeds and other tests of seeds on request and to prescribe rules and regulations governing such testing.

(7) Require that each person whose name appears on the label or labeling of seeds subject to the provisions of this chapter keep for a period of two years complete records of each lot of seed handled and keep for one year a file sample of each lot of seed after final disposition of each lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the secretary or his agent during regular business hours.

(8) Publish in bulletins or reports any and all information obtained from tests or analyses made under the provisions of this chapter which the secretary may deem proper for publication in the interest of the public, including the names and addresses of any person who has sold, offered for sale or exposed for sale any seeds subject to the provisions of this chapter so tested or analyzed. The secretary shall not publish the name or address of any citizen who shall have submitted samples of seeds for test or analysis but who has not sold, offered for sale or exposed for sale any such seeds.

(9) Establish by regulation lists of prohibited noxious weed seeds, restricted noxious weed seeds and undesirable grass seeds. By regulation, seeds of any plants may be added to or subtracted from these lists.

(c) Delegation.--The department may delegate any powers and duties under this chapter to any employee, agent or inspector.

§ 7112. Refusal, suspension or revocation of license.

The department may refuse, suspend or revoke the license of any person where the licensee has not complied with the provisions of this chapter or of any person who has used fraudulent or deceptive practices in the evasion of the provisions of this chapter.

§ 7113. Stop-sale orders.

(a) General rule.--The department may issue and enforce a written or printed stop-sale, use or removal order to the owner or custodian of any lot of seed and to hold at a designated place when the department finds the seed is being offered or exposed for sale in violation of any of the provisions of this chapter. The order shall remain in effect until the law has been complied with and the seed is released in writing by the department or the violation has been otherwise legally disposed of by written authority.

(b) Release by department.--The department shall release seed held under a stop-sale order when the requirements of the provisions of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid by the person responsible for the violation.

§ 7114. Seizure and condemnation.

A lot of seed not in compliance with the provisions of this chapter shall be subject to seizure and condemnation by the department, provided that in no instance shall the disposition

of the seed be ordered by the department without first giving the claimant an opportunity for a hearing as provided for in section 7115 (relating to appeal process) or for opportunity to apply for permission to process or relabel the seed to bring it into compliance with this chapter.

§ 7115. Appeal process.

All appeals shall be taken and hearings conducted in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

Cross References. Section 7115 is referred to in sections 7111, 7114, 7121 of this title.

§ 7116. Cooperation with other entities.

The department may cooperate with and enter into agreement with governmental agencies of this Commonwealth, agencies of the Federal Government and any other state in order to carry out the purpose and provisions of this chapter.

§ 7117. Rules and regulations.

The department shall promulgate and enforce rules and regulations necessary for administration and implementation of this chapter.

§ 7118. Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter.

§ 7119. Interference with officer or employee of department.

A person who willfully or intentionally interferes with an employee or officer of the department in the performance of that employee's or officer's duties or activities authorized under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a term of imprisonment of not more than one year or a fine of not more than $2,500, or both.

§ 7120. Delegation of duties; exclusion of local laws and regulations.

(a) Designation.--All authority vested in the secretary by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Commonwealth as the secretary may from time to time designate for said purpose.

(b) Statewide jurisdiction and preemption.--This chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding the registration, labeling, sale, storage, transportation, distribution, notification of use and use of seeds to the exclusion of all local regulations. Except as otherwise specifically provided in this chapter, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way attempt to regulate any matter relating to the registration, labeling, sale, storage, transportation, distribution, notification of use or use of seeds if any of these ordinances, laws or regulations are in conflict with this chapter.

§ 7121. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, any person who violates any of the provisions of this chapter or a rule or regulation adopted thereunder or any order issued pursuant thereto:

(1) For the first offense, commits a summary offense and may, upon conviction, be sentenced for each offense to

pay a fine of not less than $50 nor more than $100 and costs of prosecution or to undergo imprisonment for a term which shall be fixed at not more than 90 days, or both.

(2) For a subsequent offense committed within three years of a prior conviction for any violation of this chapter or any rule, regulation or order made under this chapter, commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 nor more than $1,000 and costs of prosecution or to imprisonment for not more than two years, or both.

(b) Trade secrets.--

(1) Any person who uses to his own advantage or reveals to anyone other than the department, administrative tribunal or the courts, when relevant in any judicial proceeding, any information acquired under the authority of this chapter concerning any method, records, formulations or processes which as a trade secret is entitled to protection under the law commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $500 or to imprisonment for not less than one year, or both.

(2) This subsection shall not be construed to prohibit the department from exchanging information of a regulatory nature with governmental agencies of this Commonwealth, agencies of the Federal Government or any other state to implement the provisions of this chapter.

(c) Civil penalties.--

(1) In addition to any other remedy available at law or in equity for a violation of this chapter, the department may assess a civil penalty of not more than $2,500 upon a person for each violation of this chapter. The civil penalty assessed shall be payable to the department and shall be collectible in any manner provided by law for the collection of debt.

(2) No civil penalty shall be assessed unless the person assessed the penalty has been given notice and an opportunity for a hearing on the assessment in accordance with section 7115 (relating to appeal process).

(d) Certified copy of official analysis.--In prosecution under this chapter involving the composition of a lot of seed, a certified copy of the official analysis signed by the secretary or his designee shall be accepted as prima facie evidence of the composition.

(e) De minimis violations.--Nothing in this chapter shall be construed as requiring the department to report a violation and to institute seizure proceedings as a result of de minimis violations of this chapter when the department concludes that the public interest will be best served by a suitable notice of warning in writing.

§ 7122. Disposition of funds.

Moneys received from license fees, seed testing fees, certification fees, fines and penalties shall be paid into the Agronomic Regulatory Account established in section 6831 (relating to disposition of funds). All moneys in the Agronomic Regulatory Account are hereby appropriated to the department for the purposes of Chapters 68 (relating to fertilizer) and 69 (relating to soil and plant amendment) and this chapter.
(July 11, 2022, P.L.1538, No.83, eff. imd.)

PART VIII
HORSE RACING

Chapter

91. Preliminary Provisions (Reserved)
93. Race Horse Industry Reform

Enactment. Part VIII was added October 28, 2016, P.L.913, No.114, effective immediately.

Prior Provisions. Former Part VIII, which related to miscellaneous provisions, was added December 12, 1994, P.L.903, No. 131, and renumbered to Part C October 28, 2016, P.L.913, No.114, effective immediately.

CHAPTER 91
PRELIMINARY PROVISIONS
(Reserved)

Enactment. Chapter 91 (Reserved) was added October 28, 2016, P.L.913, No.114, effective immediately.

CHAPTER 93
RACE HORSE INDUSTRY REFORM

Subchapter

A. Preliminary Provisions
B. Racing Oversight
C. Additional Licensing Requirements for Licensed Racing Entity, Secondary Pari-mutuel Organization, Totalisator and Racing Vendors
D. Compliance
E. Medication Rules and Enforcement Provisions

Enactment. Chapter 93 was added October 28, 2016, P.L.913, No.114, effective immediately.

Special Provisions in Appendix. See sections 6 and 7 of Act 114 of 2016 in the appendix to this title for special provisions relating to continuation of prior law and applicability.

Cross References. Chapter 93 is referred to in sections 1103, 1207, 13C01, 13C21, 13F02, 13F05, 13F13, 13F15, 13F33, 13F34, 13F44 of Title 4 (Amusements).

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

9301. Definitions.

§ 9301. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." An account for account wagering with a specific identifiable record of deposits, wagers and withdrawals established by an account holder and managed by the licensed racing entity or secondary pari-mutuel organization.

"Account holder." An individual who successfully completed an application and for whom the licensed racing entity or secondary pari-mutuel organization has opened an account.

"Advance deposit account wagering system." A system by which wagers are debited and payouts are credited to an advance deposit account held by a licensed racing entity or secondary pari-mutuel organization on behalf of a person.

"Applicant." A person who, on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under the provisions of this chapter. If the applicant is a person other than an individual, the commission shall determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

"Backside area." An area of the racetrack enclosure that is not generally accessible to the public and which includes, but is not limited to, a facility commonly referred to as a barn, paddock enclosure, track kitchen, recreation hall, backside employee quarters and training track and roadways providing access to the area. The term does not include an area of the racetrack enclosure which is generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surface and walking ring.

"Breakage." The odd cents of redistributions to be made on contributions to pari-mutuel pools exceeding a sum equal to the next lowest multiple of 10.

"Clean letter of credit." A letter of credit which is available to the beneficiary against presentation of only a draft or receipt.

"Commission." The State Horse Racing Commission.

"Commissioner." An individual appointed to and sworn in as a member of the commission in accordance with section 9311(b) (relating to State Horse Racing Commission).

"Conviction." A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or an order of accelerated rehabilitative disposition.

"Electronic wagering." A method of placing or transmitting a legal wager by an individual in this Commonwealth through telephone, electromechanical, computerized system or any other form of electronic media approved by the commission and accepted by a secondary pari-mutuel organization or a licensed racing entity or the licensed racing entity's approved off-track betting system located in this Commonwealth.

"Evergreen clause." A term in a letter of credit providing for automatic renewal of the letter of credit.

"Ex parte communication." An off-the-record communication engaged in or received by a commissioner of the commission regarding the merits of, or any fact in issue relating to, a pending matter before the commission or which may reasonably be expected to come before the commission in a contested on-the-record proceeding. The term shall not include:

(1) An off-the-record communication by a commissioner, the Department of Revenue, Pennsylvania State Police, Attorney General or other law enforcement official, prior to the beginning of the proceeding solely for the purpose of seeking clarification or correction to evidentiary materials intended for use in the proceedings.

(2) A communication between the commission or a commissioner and legal counsel.

"Felony." An offense under the laws of this Commonwealth or the laws of another jurisdiction, punishable by imprisonment for more than five years.

"Financial interest." An ownership, property, leasehold or other beneficial interest in an entity. The term shall not

include an interest which is held or deemed to be held in any of the following:

(1) Securities that are held in a pension plan, profit-sharing plan, individual retirement account, tax-sheltered annuity, a plan established under section 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 457), or any successor provision, deferred compensation plan whether qualified or not qualified under the Internal Revenue Code of 1986, or any successor provision or other retirement plan that:

(i) Is not self-directed by the individual.

(ii) Is advised by an independent investment adviser who has sole authority to make investment decisions with respect to contributions made by the individual to these plans.

(2) A tuition account plan organized and operated under section 529 of the Internal Revenue Code of 1986 that is not self-directed by the individual.

(3) A mutual fund where the interest owned by the mutual fund in a licensed racing entity does not constitute a controlling interest as defined in 4 Pa.C.S. § 1103 (relating to definitions).

"Horse race meeting." A specified period and dates each year during which a licensed racing entity is authorized to conduct live racing or pari-mutuel wagering as approved by the commission.

"Horse racing." Standardbred horse racing and thoroughbred horse racing.

"Horsemen's organization." A trade association which represents the majority of owners and trainers who own and race horses at a racetrack.

"Immediate family." A spouse, parent, brother, sister or child.

"Irrevocable clean letter of credit." A clean letter of credit which cannot be canceled or amended unless there is an agreement to cancel or amend among all parties to the letter of credit.

"Land mile." A unit of distance equal to 1,609.3 meters or 5,280 feet, as measured in a straight line.

"Licensed racing entity." Any person that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from the commission.

"Licensee." The holder of a license issued under this chapter.

"Nominal change in ownership." The sale, pledge, encumbrance, execution of an option agreement or other transfer of less than 5% of the equity securities or other ownership interest of a person whose percentage ownership does not affect the decisions of the licensed racing entity.

"Nonprimary location." Any facility in which pari-mutuel wagering is conducted by a licensed racing entity under this chapter other than the racetrack where live racing is conducted.

"Ownership interest." Owning or holding, or being deemed to hold, debt or equity securities or other ownership interest or profit interest.

"Pari-mutuel wagering." A form of wagering, including manual, electronic, computerized and other forms as approved by the commission, on the outcome of a horse racing event in which all wagers are pooled and held by a licensed racing entity or secondary pari-mutuel organization for distribution of the

total amount, less the deductions authorized by law, to holders of winning tickets.

"Person." Any natural person, corporation, foundation, organization, business trust, estate, limited liability company, license corporation, trust, partnership, limited liability partnership, association or any other form of legal business entity.

"Primary market area of a racetrack." The land area included in a circle drawn with the racetrack as the center and a radius of 35 land miles.

"Principal." Any of the following individuals associated with a partnership, trust association, limited liability company or corporation:

(1) The chairman and each member of the board of directors of a corporation.

(2) Each partner of a partnership and each participating member of a limited liability company.

(3) Each trustee and trust beneficiary of an association.

(4) The president or chief executive officer and each other officer, manager and employee who has policy-making or fiduciary responsibility within the organization.

(5) Each stockholder or other individual who owns, holds or controls, either directly or indirectly, 5% or more of stock or financial interest in the collective organization.

(6) Any other employee, agent, guardian, personal representative, lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

"Racetrack." The physical facility where a licensed racing entity conducts thoroughbred or standardbred horse race meetings respectively with pari-mutuel wagering.

"Racetrack enclosure." For purposes of this chapter, the term "racetrack enclosure," with respect to each licensed racing entity, shall be deemed to include at least one primary racetrack location at which horse race meetings authorized to be held by the licensed racing entities are conducted, including the grandstand, frontside and backside facilities and all primary, nonprimary, contiguous and noncontiguous locations of the licensed racing entity which are specifically approved by the commission for conducting the pari-mutuel system of wagering on the results of horse racing held at such meetings or race meetings conducted by another licensed racing entity or transmitted to such locations by simulcasting.

"Racing vendor." A person who provides goods or services to a licensed racing entity directly related to racing or the racing product, as determined by the commission.

"Secondary market area of a racetrack." The land area included in a circle drawn with the racetrack as the center and a radius of 50 land miles, not including the primary market area of the racetrack.

"Secondary pari-mutuel organization." A licensed entity, other than a licensed racing entity, that offers and accepts pari-mutuel wagers. A person or entity that provides to a licensed racing entity hardware, software, equipment, content or services used to manage, conduct, operate or record pari-mutuel wagering activity by or from residents of this Commonwealth shall not be deemed to be a secondary pari-mutuel organization solely by virtue of the provision of the assets or services.

"Simulcast." Live video and audio transmission of a race and pari-mutuel information for the purpose of pari-mutuel

wagering at locations other than the racetrack where the race is run.

"Standardbred horse racing" or **"harness racing."** A form of horse racing in which the horses participating are attached "in harness" to a sulky or other similar vehicle, at a specific gait, either a trot or pace.

"Substantial change in ownership." The sale, pledge, encumbrance, execution of an option agreement or another transfer of 5% or more of the equity securities or other ownership interest of a person whose percentage ownership affects the decisions of the licensed racing entity.

"Thoroughbred horse racing." The form of horse racing in which each participating horse is mounted by a jockey, is duly registered with The Jockey Club of New York and engages in horse racing on the flat, which may include a steeplechase or hurdle race.

"Totalisator." A computer system used to pool wagers, record sales, calculate payoffs and display wagering data on a display device that is located at a pari-mutuel facility or nonprimary location.

Cross References. Section 9301 is referred to in section 1103 of Title 4 (Amusements).

SUBCHAPTER B
RACING OVERSIGHT

Sec.

9311. State Horse Racing Commission.
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§ 9311. State Horse Racing Commission.

(a) Establishment.--The State Horse Racing Commission is established as a commission within the Department of Agriculture to independently regulate the operations of horse racing, the conduct of pari-mutuel wagering and the promotion and marketing of horse racing in this Commonwealth in accordance with this chapter.

(b) Membership.--The commission shall consist of the following members:

(1) Four members appointed by the Governor as follows:

(i) One individual representing the thoroughbred horsemen's organizations in this Commonwealth selected from a list of at least 10 qualified individuals submitted by the thoroughbred horsemen's organizations.

(ii) One individual representing a thoroughbred breeder organization in this Commonwealth selected from a list of at least 10 qualified individuals submitted by a thoroughbred breeder organization.

(iii) One individual representing the standardbred horsemen's organizations in this Commonwealth selected from a list of at least 10 qualified individuals submitted by the standardbred horsemen's organizations.

(iv) One individual representing a standardbred breeder organization in this Commonwealth selected from a list of at least 10 qualified individuals submitted by a standardbred breeder organization.

(2) One member appointed by each of the following, none of whom shall be a member of a horsemen's organization or breeder organization:

(i) The President pro tempore of the Senate.

(ii) The Minority Leader of the Senate.

(iii) The Speaker of the House of Representatives.

(iv) The Minority Leader of the House of Representatives.

(3) The Secretary of Agriculture or the secretary's designee, who shall be a nonvoting ex officio member.

(4) One individual who is a licensed doctor of veterinary medicine in this Commonwealth, who shall not be a member of a horsemen's organization or a breeder organization, appointed by the Governor.

(5) Each appointing authority shall make its appointments within 30 days of the effective date of this section. Appointments to fill a vacancy shall be made within 10 days of the creation of the vacancy. An appointment shall not be final until receipt by the appointing authority of a background investigation of the appointee by the Pennsylvania State Police, which shall be completed within 30 days of the appointment. A person who has been convicted in a domestic or foreign jurisdiction of a felony, infamous crime, gambling offense or an offense related to fixing horse races or animal cruelty may not be appointed to the commission.

(6) The following shall apply to appointees, commissioners, employees and independent contractors:

(i) Each commissioner at the time of appointment must be at least 25 years of age and must have been a resident of this Commonwealth for a period of at least one year immediately preceding appointment. Each

commissioner must remain a resident of this Commonwealth during the term of membership on the commission.

(ii) Except for the commissioner appointed under paragraph (3), a person may not be appointed a commissioner if the person is a public official or party officer as defined in 4 Pa.C.S. § 1512 (relating to financial and employment interests) in this Commonwealth or any of its political subdivisions.

(iii) Each commissioner, employee and independent contractor of the commission must sign an agreement not to disclose confidential information.

(iv) Except for a commissioner appointed under paragraph (1), a commissioner, employee or independent contractor of the commission or other agency having regulatory authority over horse racing under this chapter may not be employed, hold an office or position or be engaged in an activity which is incompatible with the position, employment or contract.

(v) A commissioner may not be paid or receive a fee or other compensation for any activity related to the duties or authority of the commission other than compensation and expenses provided by law.

(vi) A commissioner, employee or independent contractor of the commission may not participate in a hearing, proceeding or other matter in which the member, employee or independent contractor, or the immediate family thereof, has a financial interest in the subject matter of the hearing or proceeding or other interest that could be substantially affected by the outcome of the hearing or proceeding without first fully disclosing the nature of the interest to the commission and other persons participating in the hearing or proceeding. The commission shall determine if the interest is a disqualifying interest that requires the disqualification or nonparticipation of a commissioner, an employee or independent contractor.

(vii) At the time of appointment and annually thereafter, each commissioner shall disclose the existence of any financial interest in any applicant or licensed racing entity and in an affiliate, intermediary, subsidiary or holding company thereof held by the commissioner or known to be held by a commissioner's immediate family. The disclosure statement shall be filed with each director established under subsection (d)(2) and with the appointing authority for such commissioner and shall be open to inspection by the public at the office of the commission during the normal business hours of the commission and posted on the commission's Internet website for the duration of a commissioner's term and for two years after a commissioner leaves office.

(viii) (Reserved).

(ix) A commissioner, employee or bureau director of the commission may not directly or indirectly solicit, request, suggest or recommend to any applicant, licensed racing entity or an affiliate, intermediary, subsidiary or holding company thereof or to an employee or agent thereof, the appointment or employment of any person in any capacity by the applicant, licensed racing entity or an affiliate, intermediary, subsidiary or holding company thereof during the term of office or employment with the commission.

(x) Except for a commissioner appointed under paragraph (1), a commissioner may not accept employment with an applicant for a horse racing license, a licensed racing entity, or an affiliate, intermediary, subsidiary or holding company thereof, for a period of two years from the termination of the term of office.

(xi) A former commissioner may not appear before the commission in any hearing or proceeding or participate in any other activity on behalf of any applicant for a horse racing license, a licensed racing entity, or an affiliate, intermediary, subsidiary or holding company of an applicant or licensed racing entity, for a period of two years from the termination of term of office.

(xii) A commissioner or employee of the commission may not accept a complimentary service, place a wager or be paid any prize from any wager on a horse race at a racetrack or nonprimary location within this Commonwealth or at any other racetrack or nonprimary location outside this Commonwealth which is owned or operated by a licensed racing entity or any of its affiliates, intermediaries, subsidiaries or holding companies for the duration of the commissioner's or employee's term of office or employment. Nothing in this section shall be construed to prohibit a commissioner appointed under paragraph (1) from being awarded a purse or breeders' award for the commissioner's participation in horse racing.

(xiii) A commissioner who has been convicted during his term of office in a domestic or foreign jurisdiction of a felony, infamous crime, offense related to fixing or rigging horse races or gambling offense shall, upon conviction, be automatically removed from the commission and shall be ineligible to become a commissioner in the future.

(xiv) The following shall apply to an employee of the commission, who is not subject to a collective bargaining agreement, whose duties substantially involve licensing, enforcement, development of law, promulgation of regulations or development of policy relating to horse racing under this chapter or who has other discretionary authority which may affect or influence the outcome of an action, proceeding or decision under this chapter, including the director of a bureau:

(A) The individual may not, for a period of two years following termination of employment, accept employment with or be retained by an applicant for a horse racing license or a licensed racing entity or by an affiliate, intermediary, subsidiary or holding company of an applicant or a licensed racing entity.

(B) The individual may not, for a period of two years following termination of employment, appear before the commission in a hearing or proceeding or participate in activity on behalf of any applicant, licensee or licensed racing entity or on behalf of an affiliate, intermediary, subsidiary or holding company of any applicant, licensee or licensed racing entity.

(C) This subparagraph shall not apply to an employee subject to the jurisdiction of the

Pennsylvania Supreme Court under section 10(c) of Article V of the Constitution of Pennsylvania.

(xv) Nothing under subparagraph (xiv) shall prevent a current or former employee of the commission from appearing before the commission in a hearing or proceeding as a witness or testifying as to a fact or information.

(xvi) The State Ethics Commission shall issue a written determination of whether a person is subject to subparagraph (xiv) upon the written request of the person or the person's employer or potential employer. A person that relies in good faith on a determination issued under this paragraph shall not be subject to any penalty for an action taken if all material facts set forth in the request for the determination are correct.

(xvii) The State Ethics Commission shall publish a list of all employment positions within the commission whose duties would subject the individuals in those positions to the provisions of subparagraph (xiv). The commission shall assist the State Ethics Commission in the development of the list, which shall be published by the State Ethics Commission in the Pennsylvania Bulletin biennially and posted by the commission on the commission's Internet website. Upon request, employees of the commission shall have a duty to provide the State Ethics Commission with adequate information to accurately develop and maintain the list. The State Ethics Commission may impose a civil penalty under 65 Pa.C.S. § 1109(f) (relating to penalties) upon an individual who fails to cooperate with the State Ethics Commission under this subparagraph. An individual who relies in good faith on the list published by the State Ethics Commission shall not be subject to any penalty for a violation of subparagraph (xiv).

(xviii) A commissioner may not solicit, request, suggest or recommend the employment by the commission of an immediate family member.

(xix) If a commissioner violates any provision of this section, the appointing authority may remove the person from the commission. A commissioner removed under this paragraph shall, for a period of five years following removal, be prohibited from future appointment to the commission and shall be prohibited from applying for a license or other authorization under this chapter and from becoming an independent contractor with the commission.

(xx) Except for a commissioner appointed under paragraph (1), a commissioner or employee of the commission may not directly or indirectly have an ownership interest in a race horse which is entered in a horse race meeting in this Commonwealth.

(7) A commissioner shall not be personally liable for any of the following:

(i) Obligations of the commission.

(ii) Actions which were within the scope of their office and made in good faith.

(b.1) Initial appointments to commission.--

(1) Appointees initially appointed under subsection (b) shall serve an initial term of two years and until their successors are appointed and qualified.

(2) An appointment to fill a vacancy created by a commissioner appointed in accordance with paragraph (1) shall be for the remainder of the unexpired term.

(b.2) Terms of office.--Upon the expiration of a term of a commissioner appointed under subsections (b) and (b.1), the following shall apply:

(1) The term of office of a gubernatorial appointee shall be three years and until a successor is appointed and qualified.

(2) The term of office of a legislative appointee shall be two years and until a successor is appointed and qualified.

(3) A legislative appointee shall serve no more than three full consecutive terms.

(4) A gubernatorial appointee shall serve no more than two full consecutive terms.

(5) An appointment to fill a vacancy shall be for the remainder of the unexpired term.

(6) A commissioner appointed to fill a vacancy under paragraph (3) may serve three full terms following the expiration of the term related to the vacancy.

(7) A commissioner appointed to fill a vacancy under paragraph (4) may serve two full terms following the expiration of the term related to the vacancy.

(c) Chairperson.--The governor shall appoint the chairperson of the commission.

(c.1) Compensation.--Commissioners shall be reimbursed for documented expenses incurred in the performance of their official duties and, except for commissioners appointed under subsection (b)(3), commissioners shall be paid $150 per diem.

(c.2) Meetings.--The commission shall meet at least once a month and at other times as the commission chairperson deems necessary. Public notice of the time and place of meetings of the commission shall be given in accordance with 65 Pa.C.S. Ch. 7 (relating to open meetings).

(d) Office of Horse Racing.--There is established within the commission an Office of Horse Racing.

(1) The office shall be comprised of the following:

(i) The Bureau of Thoroughbred Horse Racing shall have oversight over the conduct of thoroughbred horse racing in this Commonwealth.

(ii) The Bureau of Standardbred Horse Racing shall have oversight over the conduct of standardbred horse racing in this Commonwealth.

(2) There shall be a Director of the Bureau of Thoroughbred Horse Racing and a director of the Bureau of Standardbred Horse Racing to serve and report to the commission. The director of each bureau shall not be supervised by the Department of Agriculture. The commission shall assign the directors duties and responsibilities as required to fulfill the commission's obligations under this chapter or any other act. The commission may, by order, delegate duties and responsibilities to the bureau director as the commission determines necessary to discharge the day-to-day licensing, enforcement and administrative operations of the commission. The director of each bureau established in this section must meet all of the following requirements:

(i) Has either:

(A) been certified as a racing official; or

(B) has at least five years' experience in the management of a licensed racing entity or equivalent racing experience.

(ii) Any other criteria established by the commission.

(3) Each bureau established under this subsection shall have the following powers and duties:

(i) Evaluate and review all applicants and applications for a thoroughbred horse racing or standardbred horse racing license. A bureau under this section shall be prohibited from disclosing any portion of an evaluation to a commissioner prior to the decision relating to the applicant's suitability for licensure by the commission.

(ii) Inspect and monitor licensees and other persons regulated under this chapter for noncriminal violations, including potential violations referred to either bureau by the commission or other person.

(iii) Monitor horse racing operations to ensure compliance with this chapter.

(iv) Inspect and examine licensed racing entities and racetrack facilities.

(A) Inspections may include the review and reproduction of any document or record.

(B) Examinations may include the review of accounting, administrative and financial records, management control systems, procedures and other records.

(v) Refer possible criminal violation to law enforcement.

(vi) Cooperate in the investigation and prosecution of any criminal violation.

(vii) Issue administrative subpoenas to effectuate an inspection and review under this paragraph, administer oaths and take testimony as necessary for the administration of this chapter.

(e) Jurisdiction.--The commission shall have jurisdiction and regulatory authority over the following:

(1) Pari-mutuel wagering and other horse racing activities in this Commonwealth.

(2) A licensed person engaged in pari-mutuel horse racing activities.

(3) Out-of-competition drug testing, which shall include the random drug testing of any horse entered in a race, notwithstanding the physical location of the horse, stabled on the grounds or shipped into a licensed racing entity's facility.

(4) The conduct of horse racing in this Commonwealth.

(f) Voting.--

(1) Except as otherwise provided in this subsection, actions of the commission shall be subject to a simple majority vote of the commission.

(2) A qualified majority vote consisting of the two commissioners appointed under subsection (b)(1)(i) and (ii) and as many votes of the remaining voting commissioners as necessary to constitute a majority of those commissioners voting shall be required to:

(i) Approve, issue, deny or condition a license to conduct thoroughbred horse race meetings under section 9318 (relating to licenses for horse race meetings).

(ii) Adopt regulations governing thoroughbred horse race meetings under this section.

(iii) Employ a director of the Bureau of Thoroughbred Horse Racing under subsection (d)(2).

(3) A qualified majority vote consisting of the two commissioners appointed under subsection (b)(1)(iii) and (iv) and as many votes of the remaining voting commissioners as necessary to constitute a majority of those commissioners voting shall be required to:

(i) Approve, issue, deny or condition a license to conduct standardbred horse race meetings under section 9318.

(ii) Adopt rules and regulations governing standardbred horse race meetings under this section.

(iii) Employ a director of the Bureau of Standardbred Horse Racing under subsection (d)(2).

(4) Commissioners appointed under subsection (b)(1)(i) and (ii) shall be disqualified and must abstain from voting on any matter under paragraph (3).

(5) Commissioners appointed under subsection (b)(1)(iii) and (iv) shall be disqualified and must abstain from voting on any matter under paragraph (2).

(6) If one or more appointees under subsection (b)(1) is not participating in voting on any matter upon which they are otherwise eligible to vote under paragraph (2) or (3), the qualified majority shall consist of the remaining appointee under the respective subparagraph of subsection (b)(1) pursuant to which the nonparticipating commissioner has been appointed, if any, and as many commissioners as necessary to constitute a majority of those commissioners voting.

(g) Records.--The commission shall maintain at its office the following:

(1) All documents, digital or nondigital, provided to or filed with the commission relating to the regulation of horse racing and pari-mutuel wagering under this chapter. The commission may accept digital signatures on documents provided or filed, and documents may be designated as confidential in accordance with commission policy.

(2) A docket setting forth the names of all stockholders in a licensed racing entity. The docket shall be available for public inspection during normal business hours of the commission.

(3) The number of shares held by each stockholder.

(4) A complete record of proceedings of the commission relating to horse racing and pari-mutuel wagering.

(h) Rules and regulations.--The following shall apply:

(1) All rules and regulations promulgated under the former act of December 11, 1967 (P.L.707, No.331), referred to as the Pennsylvania Thoroughbred Horse Racing Law, or the former act of December 22, 1959 (P.L.1978, No.728), referred to as the Pennsylvania Harness Racing Law, shall remain in effect except to the extent that they are in direct conflict with this chapter. The commission may adopt, amend, revise or alter the rules and regulations as the commission deems necessary.

(2) The commission shall promulgate rules and regulations necessary for the administration and enforcement of this chapter. Except as provided in this paragraph and paragraphs (3) and (5), regulations shall be promulgated in accordance with law.

(3) In order to facilitate the prompt implementation of this chapter, regulations promulgated by the commission shall be deemed temporary regulations which shall not expire

for a period of six years following publication. Temporary regulations shall not be subject to:

(i) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(ii) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(iii) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(4) The commission's authority to promulgate temporary regulations under paragraph (3) shall expire three years after the effective date of this section. Regulations adopted after this period shall be promulgated as provided by law.

(5) In order to facilitate the prompt implementation of regulations required by the Horseracing Integrity and Safety Act of 2020 (Public Law 116-260, 134 Stat. 1182), the commission may promulgate temporary regulations that shall expire no later than three years following the publication of the temporary regulations. The commission may promulgate temporary regulations not subject to:

(i) Sections 201, 202, 203, 204 and 205 of the Commonwealth Documents Law.

(ii) Sections 204(b) and 301(10) of the Commonwealth Attorneys Act.

(iii) The Regulatory Review Act.

(6) The commission's authority to promulgate temporary regulations under paragraph (5) shall expire three years after the effective date of this paragraph. Regulations adopted after this period shall be promulgated as provided by law.

(i) Application.--The commission shall develop an application for applicants seeking a license to conduct horse racing under this chapter.

(j) Licenses.--Each license to conduct horse racing or any other activity under this chapter issued prior to January 1, 2017, shall remain in effect for the remainder of the term for which the license was issued unless revoked or suspended. Beginning January 1, 2017, a license shall be renewed or a new license shall be issued in accordance with this chapter.

(k) Report of commission.--Twelve months after the effective date of this section and every year on that date thereafter, the commission, through the Department of Agriculture, shall issue a report to the Governor and each member of the General Assembly on the general operation of the commission and each licensee's performance, including number and win per race and total gross revenue at each facility of a licensed racing entity during the previous year, all taxes, fees, fines and other revenues collected and, where appropriate, disbursed, the costs of operation of the commission, all hearings conducted and the results of the hearings and other information that the commission deems necessary and appropriate. Notwithstanding any other reporting requirements in 4 Pa.C.S. § 1211 (relating to reports of board), the Pennsylvania Gaming Control Board and the Department of Agriculture must jointly submit the report under this subsection relating to racing on an annual basis.

(l) Record of proceedings.--The commission shall cause to be made and kept a record of all proceedings held at public meetings of the commission. A verbatim transcript of those proceedings shall be prepared by the commission upon the request of any person and the payment by that person of the costs of preparation.

(m) Public records.--The commission shall annually post on its Internet website a list of all the itemized expenses of employees and commissioners that were or are to be reimbursed from the State Racing Fund. The list shall identify the nature of the expense, the employee, member or the agency and employee of the agency to which an expense is attributable. By October 1 of each year, a final report of all expenses described in this subsection for the preceding fiscal year shall be posted on the commission's Internet website and shall be submitted to the Appropriations Committee of the Senate, the Agriculture and Rural Affairs Committee of the Senate, the Appropriations Committee of the House of Representatives and the Agriculture and Rural Affairs Committee of the House of Representatives. Information posted on the Internet website under this subsection shall be financial records for the purposes of and subject to redaction under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(n) Reimbursement.--The Department of Agriculture's provision of shared administrative services, shared staff and shared facilities to the commission must be reimbursed from the State Racing Fund and shall be limited to actual costs of providing the services, staff and facilities, including salaries, benefits and expenses of employees providing the shared administrative services. The Department of Agriculture must retain records regarding administrative shared services provided to the commission by a Department of Agriculture's employee.

(Sept. 30, 2022, P.L.1630, No.97, eff. imd.)

2022 Amendment. Act 97 amended subsec. (h).

Cross References. Section 9311 is referred to in sections 9301, 9317, 9319 of this title.

§ 9312. Additional powers of commission.

The commission shall regulate horse racing at which pari-mutuel wagering is conducted and approve the number of racing days allocated to each licensed racing entity. In addition to any other powers of the commission:

(1) The commission shall promulgate regulations regarding medication rules as required under Subchapter E (relating to medication rules and enforcement provisions).

(2) The following shall apply:

(i) The commission shall require an applicant under this chapter to submit to fingerprinting for a report of Federal criminal history record information.

(ii) The applicant must submit a full set of fingerprints to the Pennsylvania State Police or the Pennsylvania State Police's authorized agent for the purpose of a record check. The Pennsylvania State Police or the Pennsylvania State Police's authorized agent must then submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions.

(iii) The commission shall consider information obtained under this paragraph for the purpose of screening applicants for fitness for licensure in accordance with the provisions of this chapter.

(iv) National criminal history record information received by the commission shall be handled and maintained in accordance with Federal Bureau of Investigation policy.

(v) Fingerprints obtained under this paragraph may be maintained by the commission and Pennsylvania State Police to enforce this chapter and for general law enforcement purposes.

(vi) In addition to any other fee or cost assessed by the commission, an applicant must pay for the cost of the fingerprint process.

(vii) The commission may exempt applicants for positions not related to the care or training of horses, racing, wagering, security or the management of a licensed racing entity from the provisions of this chapter.

(3) Within 90 days of the effective date of this section, the commission must adopt and publish a comprehensive fee schedule in the Pennsylvania Bulletin. Two years following the effective date of this section, the commission may adopt regulations to annually increase any fee, charge or cost authorized under this chapter.

(4) The commission or designated employee of the commission shall have the power to administer oaths and examine witnesses and may issue subpoenas to compel attendance of witnesses and production of all relevant and material reports, books, papers, documents, correspondence and other evidence related to regulation and enforcement of horse racing under this chapter.

(5) The commission's consideration and resolution of all license or other regulatory administrative actions shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure) or with procedures adopted by order of the commission. Notwithstanding 2 Pa.C.S. §§ 504 (relating to hearing and record) and 505 (relating to evidence and cross-examination), the commission may adopt procedures to provide parties before it with a documentary hearing and may resolve disputed material facts without conducting an oral hearing where constitutionally permissible.

(6) The commission may adopt national standards from other racing jurisdictions or commission-approved trade organizations to establish:

(i) uniform drug threshold levels;

(ii) consistent sanctions for drug testing violations; and

(iii) a system to monitor advanced deposit wagering and online pari-mutuel wagering company activities.

(7) The commission may issue grants from the annual appropriations to race horse rescue and rehabilitation programs operating within this Commonwealth.

(8) The commission shall direct and oversee that each licensed racing entity's racetrack surface is maintained in such a way as to maximize the safety of the horse, jockey or driver. The commission may develop guidelines to carry out this paragraph and may contract with, hire or otherwise consult with racetrack surface experts to carry out the provisions of this section.

(9) The State Horse Racing Commission shall have jurisdiction over and shall promulgate regulations as necessary for the proper administration of all racing conducted by a county agricultural society or an independent agricultural society as provided in the act of July 8, 1986 (P.L.437, No.92), known as the Pennsylvania Agricultural Fair Act.

§ 9313. Budget.

Beginning July 1, 2016, the commission and the Department of Agriculture shall annually submit a budget request to the Secretary of the Budget in accordance with the provisions contained in section 610 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, consisting of amounts to be appropriated from the State Racing Fund, the Pennsylvania Race Horse Development Trust Fund and the General Fund to administer and enforce this chapter and for the promotion of horse racing. Beginning July 1, 2016, and annually thereafter, 1% of the previous fiscal year's deposits into the Pennsylvania Race Horse Development Trust Fund shall be transferred from the Pennsylvania Race Horse Development Trust Fund to the State Racing Fund to provide for the promotion of horse racing.
(Oct. 30, 2017, P.L.419, No.42, eff. imd.)

Cross References. Section 9313 is referred to in section 1405.1 of Title 4 (Amusements).

§ 9314. Location.

After January 1, 2017, a licensed racing entity shall conduct a horse race meeting at the location designated and approved by the commission.

§ 9315. Number of licensed racing entities.

(a) Standardbred horse racing.--No more than five persons shall be licensed to conduct a horse race meeting. No person licensed under this chapter to conduct standardbred horse racing with pari-mutuel wagering shall be licensed to conduct thoroughbred horse racing with pari-mutuel wagering.

(b) Thoroughbred horse racing.--No more than six persons shall be licensed by the commission to conduct a horse race meeting. No person licensed under this chapter to conduct thoroughbred horse racing with pari-mutuel wagering shall be licensed to conduct standardbred horse racing with pari-mutuel wagering.

§ 9316. Department of Revenue.

The Department of Revenue shall provide financial administration of pari-mutuel wagering under this chapter in accordance with Department of Revenue regulations and regulations of the commission. The Department of Revenue shall prescribe the form and system of accounting to be used by licensed racing entities and may access and examine records, equipment and other information relating to pari-mutuel wagering.

§ 9317. Allocation of racing days.

(a) General rule.--

(1) Horse racing shall be conducted consistent with 4 Pa.C.S. § 1303 (relating to additional Category 1 slot machine license requirements).

(2) The required racing days under this section and 4 Pa.C.S. § 1303(a)(2) and (b) may be waived or modified by the commission if the waiver or modification has been agreed to by the horsemen's organization and the licensed racing entity at the racetrack where the racing days are to be scheduled or raced.

(3) The provisions of 4 Pa.C.S. § 1303(d) shall not apply if the reason for noncompliance with that section by a licensed racing entity is the cancellation of racing days due to the commission's inability to properly regulate and oversee the conduct of horse racing in this Commonwealth due to inadequate funding.

(b) Certification.--The commission shall submit to the Secretary of Revenue the approved number of racing days for

each licensed racing entity, including the following information:

(1) the names and addresses of the licensed racing entity;

(2) the names and addresses of the owners, officers and general managers of the licensed racing entity; and

(3) any other information the commission deems appropriate.

(c) Cancellation.--

(1) If a racing day is canceled by a licensed racing entity for reasons beyond the licensed racing entity's control, the commission shall grant the licensed racing entity the right to conduct that racing day in the same or the next ensuing calendar year, if schedules permit.

(2) A director of a bureau established under section 9311 (relating to State Horse Racing Commission), after consultation with the licensed racing entity and the horsemen's organization at the racetrack, may cancel a race if it is determined that fewer than six horses have entered the race.

§ 9318. Licenses for horse race meetings.

(a) Procedure and terms.--

(1) After January 1, 2017, a person seeking a license to conduct horse race meetings at which pari-mutuel wagering is permitted or seeking to renew the license shall file an application or renewal application with the commission in the manner prescribed by the commission. A license to conduct horse race meetings shall be issued for a period of three years.

(2) A licensed racing entity shall have the privilege to conduct a horse race meeting at which pari-mutuel wagering is permitted. A license to conduct a horse race meeting shall not be a property right and may not be used as collateral or be encumbered.

(3) The commission may revoke or suspend the license of a licensed racing entity if the commission finds that the licensed racing entity, or its owners, officers, managers or agents, have not complied with this chapter and regulations promulgated in accordance with this chapter.

(4) A licensed racing entity may not transfer a license without the approval of the commission.

(b) Conditions.--Each horse racing license shall be issued and remain in effect if the licensed racing entity complies with each condition, rule and regulation of the commission and the provisions of this chapter, including the following conditions:

(1) A horse race meeting at which pari-mutuel wagering is conducted shall be regulated by the commission.

(2) The conduct of pari-mutuel wagering shall also be regulated by the Department of Revenue.

(3) The licensed racing entity shall print in its racing programs the procedure for filing a complaint with the commission.

(c) Applications.--Applications to conduct horse race meetings shall be in the form prescribed by the commission and shall contain information as the commission may require.

(d) Fee.--An applicant or licensee seeking to conduct a horse race meeting or seeking renewal of a license shall pay to the commission a fee of $50,000. Notwithstanding the foregoing, a licensed racing entity that holds more than one horse race meeting license shall pay no more than $50,000 upon

renewal of the licenses. The license or renewal fee shall be deposited into the State Racing Fund.

(e) Action on licenses.--The following shall apply:

(1) The commission shall be prohibited from issuing a license to conduct a horse race meeting at which pari-mutuel wagering is permitted to an individual or applicant or an owner, officer, director or manager of the applicant who has been convicted of:

(i) A felony in any jurisdiction.

(ii) A misdemeanor gambling offense in any jurisdiction, unless 15 years has elapsed from the date of conviction.

(iii) Fraud or misrepresentation in any jurisdiction related to horse racing or horse breeding, unless 15 years has elapsed from the date of conviction.

(iv) An offense under 18 Pa.C.S. Ch. 55 Subch. B (relating to cruelty to animals).

(v) An offense related to fixing or rigging horse races, including 18 Pa.C.S. § 4109 (relating to rigging publicly exhibited contest) or 7102 (relating to administering drugs to race horses), or any similar crime in another jurisdiction, unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding or a pardon has been issued.

(2) Following expiration of any period applicable to an applicant under paragraph (1)(ii) or (iii), in determining whether to issue a horse racing license to an applicant, the commission shall consider the following factors:

(i) The individual or a principal of the applicant's position with the applicant.

(ii) The nature and seriousness of the offense or conduct.

(iii) The circumstances under which the offense or conduct occurred.

(iv) The age of the applicant when the offense or conduct occurred.

(v) Whether the offense or conduct was an isolated or a repeated incident.

(vi) Any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received and the recommendations of persons who have substantial contact with the applicant.

(3) If, in the judgment of the commission, the applicant has demonstrated by clear and convincing evidence that the participation of the applicant in horse racing or related activities is not:

(i) inconsistent with the public interest or best interests of horse racing;

(ii) interfering with the effective regulation of horse racing; or

(iii) creating or enhancing the danger of unsuitable, unfair or illegal practices, methods or activities in the conduct of horse racing.

(f) Denial, suspension or revocation.--The commission may deny an application for a license or revoke, suspend or fail to renew the license of any applicant or licensed racing entity if the commission finds by a preponderance of the evidence that:

(1) The applicant or licensed racing entity, or any of its owners, officers, director, managers, employees or agents:

(i) Has not complied with the conditions, rules, regulations and provisions of this chapter and that it

would be in the public interest, convenience or necessity to deny, revoke, suspend or not renew the license.

(ii) Has been convicted of a violation or attempt to violate a horse racing law, rule or regulation of a horse racing jurisdiction.

(iii) Has furnished the commission with false or misleading information relating to the application or license renewal.

(iv) Has been convicted of a crime involving moral turpitude.

(v) Has been convicted of a misdemeanor gambling offense in any jurisdiction.

(vi) Has been convicted in any jurisdiction of fraud or misrepresentation related to horse racing or horse breeding.

(2) The applicant or licensed racing entity does not have the use of a racetrack or racetrack enclosure in accordance with the provisions of 4 Pa.C.S. Pt. II (relating to gaming).

(3) The licensed racing entity has commingled horsemen's organization funds in violation of section 9345(c) (relating to commingling) or has refused to place on deposit a letter of credit under section 9346 (relating to standardbred horse racing purse money).

(4) The commission determines that the licensed racing entity has failed to properly maintain its racetrack and racetrack enclosure in good condition under this chapter or to provide adequate capital improvements to the racetrack and racetrack enclosure as required under this chapter and 4 Pa.C.S. § 1404 (relating to distributions from licensee's revenue receipts).

(5) The licensee has been convicted in any jurisdiction of an offense related to fixing or rigging horse races, including 18 Pa.C.S. § 4109 or 7102, or any similar crime in another jurisdiction, unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding or a pardon has been issued.

(g) Cessation.--If a revocation or failure to renew a license under subsection (e) occurs, the licensee's authorization to conduct previously approved activity shall immediately cease, subject to 2 Pa.C.S. (relating to administrative law and procedure). In the case of a suspension, the licensee's authorization to conduct previously approved activity shall immediately cease until the commission has notified the licensee that the suspension is no longer in effect. After request for a hearing by a licensee, the commission may grant a supersedeas, pending the final determination of the suspension.

(h) Renewal.--A horse race meeting license shall be renewed every three years upon application and, except as provided for under subsection (a)(4), shall not be transferred. Renewals of horse race meeting licenses shall not be granted automatically.

(i) Conditional licenses.--Pending a final determination under this section, the commission may issue a conditional license upon the terms and conditions as are necessary to effectuate the provisions of this chapter.

(j) Compliance.--Nothing in this section shall be construed to relieve a licensed racing entity of its duty to comply with the requirements of 4 Pa.C.S. Pt. II.

(June 28, 2017, P.L.215, No.10, eff. in 60 days)

2017 Amendment. Act 10 amended subsec. (e)(1)(iv).

Cross References. Section 9318 is referred to in section 9311 of this title.

§ 9319. Code of conduct.

(a) Scope.--The commission may adopt a comprehensive code of conduct applicable to commissioners, employees of the commission, independent contractors and the immediate family of the commissioners, employees and independent contractors to enable them to avoid any perceived or actual conflict of interest and to promote public confidence in the integrity and impartiality of the commission.

(b) Restrictions.--In addition to the other prohibitions contained in this chapter, a commissioner shall:

(1) Not accept any discount, gift, gratuity, compensation, travel, lodging or other thing of value, directly or indirectly, from any applicant, licensed racing entity, affiliate, subsidiary or intermediary of an applicant or other licensee.

(2) Disclose a conflict of interest and recuse himself from any hearing or other proceeding in which the commissioner's objectivity, impartiality, integrity or independence of judgment may be reasonably questioned due to the commissioner's relationship or association with a party connected to any hearing or proceeding or a person appearing before the commission.

(3) Refrain from any financial or business dealing which would tend to reflect adversely on the commissioner's objectivity, impartiality or independence of judgment.

(4) Avoid impropriety and the appearance of impropriety at all times and observe standards and conduct that promote public confidence in the oversight of horse racing.

(5) Comply with any other laws, rules or regulations relating to the conduct of a commissioner.

(6) Except for a commissioner appointed under section 9311(b)(3) (relating to State Horse Racing Commission), not hold or campaign for public office, hold an office in any political party or political committee as defined in 4 Pa.C.S. § 1513(d) (relating to political influence), contribute to or solicit contributions to a political campaign, political party, political committee or candidate, publicly endorse a candidate or actively participate in a political campaign.

(c) (Reserved).

(d) Ex parte communications.--

(1) A commissioner, except the commissioner appointed under section 9311(b)(3), may not engage in any ex parte communication with any person.

(2) If a commissioner received or engaged in an ex parte communication, a commissioner shall inform the director of the appropriate bureau who shall notify all parties directly affected by the anticipated vote or action of the commissioner related to the ex parte communication of the substance of the communication and provide the parties with an opportunity to respond.

(3) A commissioner who engaged in or received an ex parte communication shall disqualify himself from the hearing or proceeding related to the ex parte communication if the context and substance of the communication creates substantial reasonable doubt as to a commissioner's ability to act objectively, independently or impartially.

(4) A commissioner who engaged in or received an ex parte communication and elects not to disqualify himself from the hearing or proceeding shall state the reasons for

not disqualifying himself on the record prior to the commencement of the hearing or proceeding.

(5) (Reserved).

(6) Failure of a commissioner who received or engaged in an ex parte communication to disqualify himself under this subsection shall be grounds for appeal to a court of competent jurisdiction if the commission action being appealed could not have occurred without the participation of the commissioner.

(7) This subsection shall not preclude a commissioner from consulting with other commissioners individually if the consultation complies with 65 Pa.C.S. Ch. 7 (relating to open meetings) or with commission employees or independent contractors whose functions are to assist the commission in carrying out its adjudicative functions.

§ 9320. Financial interests.

No director, owner, officer, manager or employee of an applicant or licensed racing entity or their immediate family shall accept gifts from breeders, owners, trainers or other individuals who participate in the conduct of horse racing in this Commonwealth.

§ 9321. Officials at horse race meetings.

(a) Racetrack racing official.--The commission shall approve each racetrack employee whose duties include the enforcement of pari-mutuel racing activities which directly or indirectly affect the racing product. Compensation for an official under this subsection shall be paid by the licensed racing entity.

(b) Commission racing official.--The commission shall employ individuals who shall be designated as commission racing officials and whose duties shall include the oversight and enforcement of this chapter, regulations and commission policies related to prerace activities, the conduct of live racing and pari-mutuel wagering. The commission, by regulation, shall establish the duties and responsibilities for a commission racing official. The cost for and compensation of a commission racing official shall be paid by the commission.

§ 9322. Secondary pari-mutuel organization.

(a) Requirements.--The following shall apply to a secondary pari-mutuel organization:

(1) A secondary pari-mutuel organization offering and accepting pari-mutuel wagers within this Commonwealth must be properly licensed by the commission. Each secondary pari-mutuel organization employee directly or indirectly responsible for the acceptance of wagers on horse races or the transmittal of wagering information to and from the Commonwealth must be properly licensed.

(2) A secondary pari-mutuel organization must comply with each rule and regulation of the commission.

(3) As a condition of licensing and annual license renewal, a license application of a secondary pari-mutuel organization must include all of the following:

(i) Disclosure of each officer, director, partner and share holder with a 5% or greater share of ownership or beneficial interest.

(ii) A list of personnel assigned to work in this Commonwealth.

(iii) Certification of compliance with totalisator standards and licensing requirements adopted by the commission.

(iv) A type II SAS 70 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate

financial controls are in place in the secondary pari-mutuel organization.

(v) An agreement to allow the commission to inspect and monitor each facility used by the secondary pari-mutuel organization for accepting, recording or processing pari-mutuel wagers accepted in this Commonwealth.

(vi) Certification of the use of a pari-mutuel system which meets all requirements for a pari-mutuel system utilized by a licensed racing entity in this Commonwealth.

(4) Fitness and experience of a secondary pari-mutuel organization must be consistent with the public interest, convenience and necessity and the best interests of racing generally, including, but not limited to, all of the following:

(i) Meeting general industry standards for business and financial practices, procedures and controls.

(ii) Possession of a wagering system that ensures that all wagering information is transmitted to and calculated in the appropriate host track pool.

(iii) Utilization of a totalisator system that meets wagering-industry standards and certification criteria.

(iv) Meeting general industry standards for physical security of computerized wagering systems, business records, facilities and patrons.

(v) Having no indications of improper manipulation of a secondary pari-mutuel organization's wagering system, including software.

(vi) Having policies and procedures that ensure a secondary pari-mutuel organization's key individuals have applied and are eligible for all required occupational licenses.

(vii) Having an annual independent audit with no audit opinion qualifications that reflect adversely on integrity.

(viii) Having a system that verifies the identity of each person placing a wager and requires the person placing a wager to disclose each beneficial interest in a wager the secondary pari-mutuel organization accepts.

(ix) Having a real-time independent monitoring system to monitor wagering activity to detect suspicious patterns, including any that might indicate criminal activity or regulatory violations. The system must verify each transaction performed by the totalisator system and provide expeditious notice of any discrepancies or suspicious activity to the host track, wagering site, due diligence investigating body and any affected regulatory agency.

(x) Having a satisfactory record of customer relations, including no excessive unresolved patron complaints concerning the secondary pari-mutuel organization's business practices.

(xi) Holding required permits, licenses, certifications or similar documents that may be required by a racing, gaming or other pari-mutuel wagering jurisdiction.

(xii) Having sufficient measures to protect customer funds.

(xiii) Publicizing and providing a sufficient program for customer self-exclusion and wagering limitation.

(xiv) Having expertise in pari-mutuel wagering and being technologically capable of participating in simulcast and wagering activities.

(5) Financial responsibility of a secondary pari-mutuel organization must be consistent with the public interest, convenience and necessity and the best interests of racing generally, including all of the following:

(i) The secondary pari-mutuel organization and the secondary pari-mutuel organization's key individuals may not be in default or have a history of defaulting in the payment of a financial obligation, including the payment of taxes due to a taxing jurisdiction or on the payment of gaming, wagering or pari-mutuel racing-related financial obligations. A secondary pari-mutuel organization's key individuals may not be four or more months in arrears for child support that is ordered or approved by a court in any jurisdiction within the United States.

(ii) The secondary pari-mutuel organization and the secondary pari-mutuel organization's owners and sources of funds must have sufficient financial means to participate in simulcast and wagering activities, including sufficient assets and means to pay industry-related debts and obligations and to fund the operations of the secondary pari-mutuel organization.

(6) The secondary pari-mutuel organization must be fully cooperative and act in good faith with all disclosure and other duties involved in a due diligence investigation, voluntarily submit to regulatory and investigating body oversight, permit inspection of each business record upon request by a regulatory authority or investigating body, promptly honor regulatory or investigating body requests for wagering patterns or other information and, after reasonable notice, permit full access to each facility and property by a regulatory authority or investigating body.

(b) Waiver.--

(1) A due diligence investigation may rely on an investigation and oversight conducted by a commission-approved entity.

(2) The commission may not consent to the acceptance of an interstate off-track wager by a secondary pari-mutuel organization that has not been determined to be suitable under this section.

§ 9323. Occupational licenses for individuals.

(a) General rule.--The commission shall develop a licensing or other classification system for the regulation of racing vendors, trainers, jockeys, drivers, horse owners, backside area employees and other individuals participating in horse racing and all other persons required to be licensed as determined by the commission. The license shall not be a property right.

(b) Fee.--The commission shall fix and may establish classes for application fees to be paid by individuals. A license fee shall not exceed $500. All fees shall be paid to the commission and deposited into the State Racing Fund.

(c) Application.--The application for a license shall be in the form and contain the information as the commission may require.

(d) Renewal.--All licenses shall be subject to renewal every three years upon application and review. Nothing in this chapter shall be construed to relieve a licensee of the affirmative duty to notify the commission of any changes relating to the

status of its license or to any other information contained in the application materials on file with the commission. The application for renewal shall be submitted at least 60 days prior to expiration of the license and shall include an update of the information contained in the initial application and any prior renewal applications and the payment of any renewal fee required by the commission. A license for which a completed renewal application and fee, if required, has been received by the commission shall continue in effect unless and until the commission sends written notification to the holder of the license that the commission has denied the renewal of the license.

(e) Licenses.--The commission may issue any of the following:

(1) A temporary license for four months within a 12-month period pending a final determination.

(2) A conditional license upon the terms and conditions as necessary to administer this chapter.

(f) Processing and issuance.--The commission shall adopt regulations to fix the manner by which licenses are processed and issued.

(g) Action on applications.--The following shall apply:

(1) The commission may not issue a license under this section to an individual who has been convicted in a jurisdiction of a felony offense, a misdemeanor gambling offense or a fraud or misrepresentation in connection with horse racing or breeding, unless 15 years has passed from the date of conviction of the offense.

(2) Following expiration of a period applicable to an applicant under paragraph (1), in determining whether to issue a license to an applicant, the commission shall consider the following factors:

(i) The nature of the applicant's involvement with horse racing.

(ii) The nature and seriousness of the offense or conduct.

(iii) The circumstances under which the offense or conduct occurred.

(iv) The age of the applicant when the offense or conduct occurred.

(v) Whether the offense or conduct was an isolated or a repeated incident.

(vi) Any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received and the recommendations of persons who have substantial contact with the applicant.

(g.1) Denial.--The commission may deny an application for a license or suspend, revoke or refuse to renew a license issued under this section if it determines that the applicant or licensee meets any of the following:

(1) (Reserved).

(2) Has been convicted of any violation or attempts to violate any law, rule or regulation of horse racing in any jurisdiction.

(3) Has been convicted of an offense under 18 Pa.C.S. Ch. 55 Subch. B (relating to cruelty to animals).

(4) Has violated a rule, regulation or order of the commission.

(5) Has been convicted in any jurisdiction of an offense related to fixing or rigging horse races, including 18 Pa.C.S. § 4109 (relating to rigging publicly exhibited contest) or 7102 (relating to administering drugs to race

horses), or any similar crime in any other jurisdiction, unless the conviction has been overturned on appeal under the laws of the jurisdiction of the original finding or a pardon has been issued.

(6) Has not demonstrated by clear and convincing evidence that the applicant or licensee:

(i) Is a person of good character, honesty and integrity.

(ii) Is a person whose prior activities, criminal record, if any, reputation, habits and associations:

(A) Do not pose a threat to the public interest or the effective regulation and control of horse racing.

(B) Do not create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of horse racing or the carrying on of the business and financial arrangements incidental to the conduct of horse racing.

(h) Inspection.--The commission shall have the right to inspect all contracts directly affecting the administration of the racing product and wagering activities between a secondary pari-mutuel organization, licensed racing entities and racing vendors for goods and services. The commission shall adopt regulations to require racing vendors to disclose all principal owners and officers and a description of their interests in the vendors' businesses. Failure to disclose this information shall constitute grounds to deny, to revoke or to suspend any racing vendor's license issued under this chapter.

(i) Revocation or failure to renew.--In the event of a revocation or failure to renew, the licensee's authorization to conduct previously approved activity shall immediately cease and all fees paid in connection therewith shall be deemed to be forfeited. In the event of a suspension, the applicant's authorization to conduct the previously approved activity shall immediately cease until the commission has notified the applicant that the suspension is no longer in effect.

(j) Hearings.--The commission may suspend a license under subsection (i) pending a hearing on the matter, which must occur within 10 days of the suspension. The commission or its director may grant a supersedeas, if requested, pending a final resolution of the matter.

(k) (Reserved).

(l) Criminal action.--

(1) Each district attorney shall have authority to investigate and to institute criminal proceedings for a violation of this chapter.

(2) In addition to the authority conferred upon the Attorney General under the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and, following consultation with the appropriate district attorney, to institute criminal proceedings for a violation of this chapter. A person charged with a violation of this chapter by the Attorney General shall not have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(m) Regulatory action.--Nothing contained in subsection (l) shall be construed to limit the existing regulatory or

investigative authority of an agency or the Commonwealth whose functions relate to persons or matters within the scope of this part.

(n) Inspection, seizure and warrants on racetrack enclosures.--

(1) The commission, the Attorney General and the Pennsylvania State Police shall have the authority without notice and without warrant to do all of the following in the performance of their duties:

(i) Inspect and examine all premises where horse racing is conducted or where records of these activities are prepared or maintained.

(ii) Inspect all equipment and supplies in, about, upon or around premises referred to in subparagraph (i).

(iii) Seize, summarily remove and impound equipment and supplies from premises referred to in subparagraph (i) for the purposes of examination and inspection.

(iv) Inspect, examine and audit all books, records and documents pertaining to a licensee's operation.

(v) Seize, impound or assume physical control of any book, record, ledger or device.

(2) The provisions of paragraph (1) shall not be deemed to limit warrantless inspections except in accordance with constitutional requirements.

(June 28, 2017, P.L.215, No.10, eff. in 60 days)

2017 Amendment. Act 10 amended subsec. (g.1)(3).

§ 9324. (Reserved).

§ 9325. Power of commission to impose fines.

(a) General rule.--The commission may impose administrative fines upon any licensed or unlicensed racing entity, association or person participating in horse racing at which pari-mutuel wagering is conducted, other than as a patron, for a violation of any provision of this chapter or rule or regulation of the commission, not exceeding $10,000 for each violation. Each day may be considered a separate violation. Fines shall be deposited in the State Racing Fund and may be appropriated for the enforcement of this chapter.

(b) Interests.--

(1) No owner, officer or employee of a licensed racing entity or their immediate family shall have any direct or indirect interest in a race horse that is participating in a horse race meeting at which the person or relative listed under this paragraph holds any interest in the licensed racing entity conducting the horse race meeting or in the racetrack facility.

(2) The commission may impose a fine upon any person for a violation of this subsection in accordance with subsection (a).

Cross References. Section 9325 is referred to in section 9359 of this title.

§ 9326. Admission to racetrack.

(a) Power of licensed racing entity.--Except as provided in subsection (b), a licensed racing entity may refuse admission to and eject from the racetrack enclosure operated by the licensed racing entity any person licensed by the commission under this chapter and employed at an occupation at the racetrack if the person's presence is deemed detrimental to the best interests of horse racing and after citing the reasons for the determination in writing. The action of the licensed racing entity refusing the person admission to or ejecting the person

from a horse race meeting ground or racetrack enclosure shall have immediate effect unless a supersedeas has been granted by the bureau director. The person refused admission or ejected shall receive a hearing before the commission, if requested, pursuant to rules and regulations adopted for that purpose by the commission and a decision rendered following that hearing.

(b) Admission.--A licensed racing entity may not refuse admission to or eject a law enforcement official, commission member or employee or employee of the Department of Revenue while the official is engaged in the performance of the individual's official duties.

§ 9327. Security personnel.

(a) General rule.--The commission shall require licensed racing entities to employ persons as security as determined by the commission. Designated security personnel:

(1) Shall refer possible violations of the criminal laws of this Commonwealth within the racetrack or racetrack enclosure to law enforcement agencies.

(2) May not eject or exclude from the racetrack or racetrack enclosure any person because of the race, creed, color, sex, sexual orientation, national origin or religion of that person.

(b) Penalty.--An individual found within a racetrack or racetrack enclosure after having been ejected therefrom shall, upon conviction, be guilty of a summary offense and be sentenced to pay a fine of not more than $500.

§ 9328. (Reserved).

§ 9329. Interstate simulcasting.

(a) Host licensees.--The commission may approve the application of a licensed racing entity or secondary pari-mutuel organization to electronically simulcast horse races to and from this Commonwealth. Upon request by a licensed racing entity or secondary pari-mutuel organization, the commission may designate the entity as a host licensee, authorized to maintain common pari-mutuel pools on international and interstate races transmitted to and from the racetrack enclosures within this Commonwealth. All simulcasts of horse races shall comply with the provisions of the Interstate Horseracing Act of 1978 (Public Law 95-515, 15 U.S.C. § 3001 et seq.) and the laws of each state involved, placed or transmitted by an individual in one state via telephone, Internet or other electronic media and accepted and maintained in common pari-mutuel pools. The designation as a host licensee for international and interstate simulcast races shall be limited to licensed racing entities which comply with 4 Pa.C.S. § 1303(d) (relating to additional Category 1 slot machine license requirements).

(b) Simulcasts.--The following apply:

(1) Cross simulcasting of the races described in subsection (a) shall be permitted if all amounts wagered on the races in this Commonwealth are included in common pari-mutuel pools. A host licensee seeking permission to cross simulcast must obtain approval from the commission.

(2) All forms of pari-mutuel wagering shall be allowed on horse races simulcasted. The commission may permit pari-mutuel pools in this Commonwealth to be combined with pari-mutuel pools created under the laws of another jurisdiction and may permit pari-mutuel pools created under the laws of another jurisdiction to be combined with pari-mutuel pools in this Commonwealth. The commission shall promulgate regulations necessary to regulate wagering on televised simulcasts.

(c) Taxation.--Money wagered by patrons in this Commonwealth on horse races shall be computed by the amount of money wagered each racing day for purposes of taxation under section 9334 (relating to State Racing Fund and tax rate). Thoroughbred races shall be considered a part of a thoroughbred horse race meeting, and standardbred horse races shall be considered a part of a standardbred horse race meeting.

Cross References. Section 9329 is referred to in sections 9330, 9331, 9344 of this title.

§ 9330. Place and manner of conducting pari-mutuel wagering at racetrack enclosure.

(a) Wagering location.--A licensed racing entity shall provide a location during a horse race meeting within the racetrack enclosure where the licensed racing entity shall operate the pari-mutuel system of wagering by its patrons on the results of horse races held at the racetrack or televised to the racetrack enclosure by simulcasting under section 9329 (relating to interstate simulcasting). The licensed racing entity shall erect a sign or board compatible with the totalisator systems which shall display all of the following:

(1) The approximate straight odds on each horse in any race.

(2) The value of a winning mutuel ticket, straight, place or show on the first three horses in the race.

(3) The elapsed time of the race.

(4) The value of a winning daily double ticket, if a daily double is conducted, and any other information that the commission deems necessary to inform the general public.

(b) Equipment.--The commission may test and examine the equipment to be used for the display of the information under subsection (a).

(c) Electronic wagering system.--In addition to other forms of live wagering, including cash at a window teller, a licensed racing entity may operate an electronic wagering system on horse racing in accordance with all of the following:

(1) Messages to place wagers shall be to a place within the racetrack enclosure.

(2) Money used to place wagers under this subsection shall be on deposit in an amount sufficient to cover the wager at the racetrack where the account is opened.

(c.1) Regulations.--The commission may promulgate regulations necessary to regulate electronic wagering for horse racing.

(d) Taxation.--Money wagered as a result of electronic wagering shall be included in the amount wagered each racing day for purposes of taxation under section 9334 (relating to State Racing Fund and tax rate) and shall be included in the same pari-mutuel pools for each posted race. Electronic wagering systems shall be operated by the licensed racing entity, secondary pari-mutuel organization or by a duly licensed racing vendor.

(e) Conditions.--A licensed racing entity shall only accept and tabulate a wager by a direct request via electronic media from the holder of an electronic wagering account. Only the holder of the electronic wagering account shall place a wager.

(f) Primary market area.--(Repealed).

(Oct. 30, 2017, P.L.419, No.42, eff. imd.)

2017 Amendment. Act 42 repealed subsec. (f).

§ 9331. Pari-mutuel wagering at nonprimary locations.

(a) Nonprimary locations.--The following shall apply:

(1) Notwithstanding any other provision of this chapter, the commission may approve a licensed racing entity to continue to operate a nonprimary location where it has conducted pari-mutuel wagering on horse races conducted by the licensed racing entity. The licensed racing entity may continue to conduct pari-mutuel wagering at the location on horse races conducted by another licensed racing entity, which horse races may be televised to the location or on horse races simulcast to the location under section 9329 (relating to interstate simulcasting), provided that:

(i) A licensed racing entity has not established a nonprimary location within the primary market area of any racetrack other than a racetrack where the licensed racing entity conducts horse race meetings. Establishment of a nonprimary location by a licensed racing entity within the primary market area of a racetrack where the licensed racing entity conducts horse race meetings shall require approval of the commission.

(ii) A licensed racing entity has not established a nonprimary location within the secondary market area of a racetrack if the nonprimary location is approved by the commission.

(iii) A licensed racing entity has not established a nonprimary location in an area outside the primary and secondary market areas of any racetrack if the location is approved by the commission.

(2) Except as provided under paragraph (1), no additional licenses shall be permitted.

(3) The commission shall annually conduct inspections of the primary facility.

(4) The regulatory authority of the commission shall apply to nonprimary locations and any employees or racing vendors of the licensed racing entity establishing the nonprimary location.

(b) Taxation and records.--Money wagered at all primary and nonprimary locations under this chapter shall be included in common pari-mutuel pools. Money wagered by patrons on the races shall be computed by the amount of money wagered each racing day for purposes of taxation under section 9334 (relating to State Racing Fund and tax rate). The licensed racing entity conducting the horse race meeting and maintaining the pari-mutuel pools shall maintain accurate records of the amount wagered in each pool from every primary and nonprimary location.

(c) Retention.--Money retained under section 9334 shall be calculated for each location where pari-mutuel wagering is being conducted. If wagering has taken place at a nonprimary location where the wagering is conducted by a licensed racing entity other than the licensed racing entity conducting the horse race meeting, the licensed racing entity conducting the horse race meeting shall retain any money to which it is entitled by agreement. The licensed racing entity conducting the horse race meeting shall pay over the balance of the retained money to the licensed racing entity conducting the wagering at the nonprimary location.

(d) Payment of purses.--A licensed racing entity conducting a horse race meeting where pari-mutuel wagering is conducted at one or more nonprimary locations shall distribute money to the horsemen's organization, or, in accordance with the practice of the parties, to be used for payment of purses at that racetrack, as follows:

(1) Except as provided for in paragraphs (2), (3), (4) and (5), an amount equal to but not less than 6% of the daily gross wagering handle on the races at a nonprimary location.

(2) When the gross wagering handle on the races at a nonprimary location on a given day is less than $30,000, the percentage may not be less than 3%.

(3) When the gross wagering handle on the races at a nonprimary location on a given day is between $30,000 and $75,000, the percentage may not be less than 4.75%.

(4) Whenever a nonprimary location is within the primary market area of a licensed racing entity other than the licensed racing entity conducting the races, the applicable percentage shall be distributed one-half to the horsemen's organization at the racetrack or in accordance with the practice of the parties.

(5) Where the horse race meeting is being conducted to be used for the payment of purses at the racetrack and one-half to the horsemen's organization, or in accordance with the practice of the parties, at the racetrack within the primary market area to be used for the payment of purses at the racetrack.

Nothing in this subsection shall be construed to prevent a licensed racing entity from agreeing to distribute amounts greater than the percentages set forth in this subsection. However, if no alternative agreement has been reached, the total percentage for purses under this subsection shall be paid in accordance with the minimum percentages set forth in this subsection.

(e) Other payments.--Notwithstanding any other provision of this chapter, a nonprimary location may be established within the primary market area of a racetrack by agreement between the licensed racing entity and the horsemen's organization at the racetrack specifying the total percentage of handle wagered at the nonprimary location to be distributed to the horsemen's organization, or, in accordance with the practice of the parties, to be used for the payment of purses at that racetrack. If no agreement is reached covering the locations, the total percentage to be paid for purses shall be the same as that applied to on-track wagering at the racetrack located within the primary market area.

Cross References. Section 9331 is referred to in section 9356 of this title.

§ 9332. Books and records of pari-mutuel wagering.

Every licensed racing entity that conducts a horse race meeting at which pari-mutuel wagering is authorized shall maintain books and records that clearly show by separate record the total amount of money contributed to every pari-mutuel pool. The Department of Revenue or its authorized representative shall have access to examine all books and records and ascertain whether the proper amount due to the State is being paid by the licensed racing entity.

§ 9333. Filing of certain agreements with commission.

A licensed racing entity shall promptly file with the commission any lease agreement concerning any concession, labor management relation, hiring of designated classes of officers, employees or contractors specified by the commission or any other contract or agreement as the commission may prescribe.

§ 9334. State Racing Fund and tax rate.

(a) Fund.--There is established in the State Treasury the State Racing Fund. For fiscal year 2015-2016, money in the fund is appropriated on a continuing basis to the department for the

purposes of administering this chapter. Beginning on July 1, 2016, all money deposited in the fund, except money deposited in restricted accounts, shall be annually appropriated by the General Assembly for the administration and enforcement of this chapter and for the oversight and promotion of horse racing in this Commonwealth. A licensed racing entity that conducts horse race meetings or a secondary pari-mutuel organization shall pay a tax to the Department of Revenue for deposit in the State Racing Fund.

(b) Tax rate.--The tax imposed on a licensed racing entity or secondary pari-mutuel organization shall be 1.5% of the amount wagered each racing day on win, place or show wagers and 2.5% of the total amount on an exotic wager, including an exacta, daily double, quinella and trifecta wager.

(c) Expenditures.--Funds collected under subsection (b) and any interest shall be used as follows:

(1) For the administration and enforcement of this chapter including:

(i) Funds to the commission in an amount appropriated by the General Assembly.

(ii) Funds to the Department of Revenue in an amount appropriated by the General Assembly.

(2) If annual revenue under subsection (b) is sufficient to satisfy the requirement under paragraph (1), the remainder of the money shall be distributed as follows:

(i) Fifty percent shall remain in the State Racing Fund as a carry forward balance to the next fiscal year. Any carry forward balance shall be first applied to the cost of equine testing under section 9374 (relating to costs of enforcement of medication rules or regulations) and, if any still remains, for commission expenses as budgeted by the General Assembly.

(ii) Fifty percent shall be divided equally and distributed as follows:

(A) Twenty-five percent shall be paid by the Department of Revenue from the State Racing Fund for credit to the Pennsylvania Breeding Fund.

(B) Twenty-five percent shall be paid by the Department of Revenue from the State Racing Fund for credit to the Pennsylvania Sire Stakes Fund.

(d) Breakage.--All breakage retained under section 9335 (relating to pari-mutuel pool distribution) by licensed racing entities that conduct horse race meetings shall be distributed in the following manner:

(1) Thirty-seven and one-half percent of the breakage shall be paid to the Department of Revenue for credit to the State Racing Fund.

(2) Sixty-two and one-half percent of the breakage shall be retained by the licensed racing entity.

(e) Other revenues.--The State Racing Fund may also receive moneys from any other source, including, but not limited to appropriations made by the General Assembly.

Cross References. Section 9334 is referred to in sections 9329, 9330, 9331, 9336, 9337, 9344 of this title; sections 13F08, 13F42, 13F43 of Title 4 (Amusements).

§ 9335. Pari-mutuel pool distribution.

(a) Distribution.--A licensed racing entity shall distribute money in a pari-mutuel pool to the holders of winning tickets presented for payment before the first day of April of the year following the date of purchase. Failure to present a winning ticket within the prescribed period of time shall constitute a

waiver of the right to participate in the award or dividend. After April 1 of the year following the year of purchase, a licensed racing entity shall forward the necessary funds held for uncashed tickets to the Department of Revenue. The funds shall be deposited into the State Racing Fund.

(b) Remainder.--The remainder of the money shall be retained by the licensed racing entity in the following manner:

(1) Seventeen percent of the money plus the breakage from regular wagering pools or 19% of the money plus the breakage from regular wagering pools for licensed racing entities whose daily total in all pari-mutuel pools averaged less than $300,000.

(2) Twenty percent of the money plus breakage from the exacta, daily double, quinella and other wagering pools as determined by the commission.

(3) At least 26%, but no more than 35%, from the trifecta or other wagering pools as determined by the commission.

(c) Retention.--A licensed racing entity may retain lesser percentages upon approval of the commission.

Cross References. Section 9335 is referred to in sections 9334, 9344 of this title; sections 13F06, 13F08, 13F42 of Title 4 (Amusements).

§ 9336. Pennsylvania Breeding Fund.

(a) Establishment.--There is created a restricted account in the State Racing Fund to be known as the Pennsylvania Breeding Fund which shall consist of the money deposited under section 9334 (relating to State Racing Fund and tax rate) and any provision of 4 Pa.C.S. Pt. II (relating to gaming) and which shall be distributed by the commission.

(a.1) Effective dates.--If at least $10,000,000 more than the amount deposited into the Pennsylvania Breeding Fund in 2016 under subsection (a) is deposited into the Pennsylvania Breeding Fund, this subsection and subsection (d.1) shall become effective on January 1 of the year following the effective date of the deposit, and shall remain effective for each year the deposit amount under this subsection is met. If in any year the funding requirement under this subsection is not met, subsections (c) and (d) shall remain in effect for the following year.

(b) Awards from the Pennsylvania Breeding Fund.--(Expired).

(b.1) Awards from the Pennsylvania Breeding Fund.--The commission shall distribute money from the Pennsylvania Breeding Fund as follows:

(1) An award of 40% of the purse earned by every registered Pennsylvania-bred thoroughbred race horse sired by a registered Pennsylvania sire at the time of conception of the registered Pennsylvania-bred thoroughbred race horse which finishes first, second or third in any race conducted by a licensed racing entity under this chapter shall be paid to the breeder of the registered Pennsylvania-bred thoroughbred race horse.

(2) An award of 20% of the purse earned by every registered Pennsylvania-bred thoroughbred race horse sired by a nonregistered sire, which finishes first, second or third in any race conducted by a licensed racing entity under this chapter shall be paid to the breeder of the registered Pennsylvania-bred thoroughbred race horse.

(3) A single award under paragraphs (1) and (2) may not exceed 1% of the total annual fund money.

(4) An award of 10% of the purse earned by any registered Pennsylvania-bred thoroughbred race horse which finishes first, second or third in any race conducted by a licensed racing entity under this chapter shall be paid to the owner of the registered Pennsylvania sire which regularly stood in Pennsylvania at the time of conception of the Pennsylvania-bred thoroughbred race horse. A single award under this paragraph may not exceed 0.5% of the total annual fund money.

(c) Purses from Pennsylvania Breeding Fund.--

(1) Up to one-fifth of the total of the estimated Pennsylvania Breeding Fund money remaining each year after the deduction of expenses related to the administration and development of the Pennsylvania Breeding Fund program and the payment of awards under subsection (b) or (b.1) shall be divided among the licensed racing entities that conduct thoroughbred horse race meetings in direct proportion to the rate by which each licensed racing entity generated the fund money during the previous year to be used solely for purses for Pennsylvania Breeding Fund stakes races which restrict entry to a registered Pennsylvania-bred thoroughbred race horse.

(2) This subsection shall expire upon the date subsection (a.1) is implemented. If in any year the funding requirement under subsection (a.1) is not met, this subsection shall remain in effect for that year.

(d) Remaining funds.--The Pennsylvania Breeding Fund money remaining following disbursements as directed in subsections (b) or (b.1) and (c) shall be divided among the licensed racing entities that conduct thoroughbred horse race meetings in direct proportion to the rate by which each licensed racing entity generated the fund money during the previous year to be used for purses as follows:

(1) Claiming and nonclaiming Pennsylvania Breeding Fund races which restrict entry to registered Pennsylvania-bred thoroughbred race horses.

(2) Claiming and nonclaiming Pennsylvania Breeding Fund races which prefer registered Pennsylvania-bred thoroughbred race horses as starters. In these races, should eight or more registered Pennsylvania-bred thoroughbred race horses pass the entry box, the race shall be considered closed to horses other than registered Pennsylvania-bred thoroughbred race horses.

(3) This subsection shall expire upon the date subsection (a.1) is implemented. If in any year the funding requirement under subsection (a.1) is not met, this subsection shall remain in effect for that year.

(d.1) Remaining funds from Pennsylvania Breeding Fund.--The estimated Pennsylvania Breeding Fund money remaining after the deduction of expenses related to the administration and development of the Pennsylvania Breeding Fund Program and the payment of awards under subsection (b.1) shall be divided among the licensed racing entities that conduct thoroughbred horse race meetings in direct proportion to the rate by which each licensed racing entity generated the fund money during the previous year to be used solely for purses as follows:

(1) Fifty percent shall be used to award a bonus to the owner of, or pay purses of races that restrict entry to, a registered Pennsylvania-bred thoroughbred race horse sired by a registered Pennsylvania sire.

(2) Fifty percent shall be used to award a bonus to the owner of, or pay purses of races that restrict entry to, a registered Pennsylvania-bred thoroughbred race horse.

(3) In all claiming and nonclaiming races which prefer registered Pennsylvania-bred thoroughbred race horses as starters, if eight or more registered Pennsylvania-bred thoroughbred race horses pass the entry box, the race shall be considered closed to horses other than registered Pennsylvania-bred thoroughbred race horses.

(e) Funds not expended.--

(1) (Expired).

(2) Pennsylvania Breeding Fund money due to licensed racing entities, as outlined in subsections (b.1) and (d.1), but not expended during the calendar year may be carried forth in the fund on the accounts of the licensed racing entities to be expended during the succeeding year in addition to the racing entities' fund money annually due to them for purses.

(f) Pennsylvania Horse Breeders' Association.--The commission shall contract with the Pennsylvania Horse Breeders' Association as the organization responsible for the registration and records of Pennsylvania-bred thoroughbred race horses. The Pennsylvania Horse Breeders' Association shall advise the commission when called upon and shall determine the qualifications for Pennsylvania-bred thoroughbred race horses and Pennsylvania sires. Registration and records of the association shall be official records of the Commonwealth and shall be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law. At the close of each calendar year, the Pennsylvania Horse Breeders' Association shall submit to the commission for its approval an itemized budget of projected expenses for the ensuing year relating to the administration and development of the Pennsylvania Breeding Fund Program. The commission, on no more than a quarterly basis, shall reimburse from the fund the Pennsylvania Horse Breeders' Association for those expenses actually incurred in the administration and development of the Pennsylvania Breeding Fund Program.

2016 Expiration. Subsections (b) and (e)(1) expired December 31, 2016. See Act 114 of 2016.

Special Provisions in Appendix. See sections 6 and 7 of Act 114 of 2016 in the appendix to this title for special provisions relating to continuation of prior law and applicability.

Cross References. Section 9336 is referred to in section 1406 of Title 4 (Amusements).

§ 9337. Pennsylvania Sire Stakes Fund.

(a) Establishment.--There is created a restricted account in the State Racing Fund to be known as the Pennsylvania Sire Stakes Fund which shall consist of the money deposited under section 9334 (relating to State Racing Fund and tax rate) and any provision of 4 Pa.C.S. Pt. II (relating to gaming) and which shall be administered by the commission.

(b) Distribution and use of funds.--Funds shall be distributed as follows:

(1) Sixty percent of the money remaining in the excess fund account of the Pennsylvania Sire Stakes Fund at the end of the calendar year in which this subsection is enacted shall be distributed to licensed racing entities that conduct standardbred horse race meetings to be used in the next succeeding calendar year as purse money for Pennsylvania-sired horses. The remaining 40% of the money

in the excess fund account at the end of the calendar year of the enactment of this subsection, together with the interest earned on that money, shall be distributed to licensed racing entities that conduct standardbred horse race meetings to be used in the next succeeding calendar year as purse money for Pennsylvania-sired horses.

(2) After deduction of sufficient funds to cover the commission's cost of administration, 80% of all remaining money in the Pennsylvania Sire Stakes Fund at the end of the calendar year shall be distributed to licensed racing entities that conduct standardbred horse race meetings to be used as purse money for Pennsylvania-sired horses. The commission may allocate up to a total of 40% of the amount to be distributed to licensed racing entities in a calendar year for use for a series of championship final races at the racetracks of licensed business entities that conduct standardbred horse race meetings. The commission shall distribute the money to these championship final races in an equal amount for each sex, age and gait for two-year-old trotters and pacers and three-year-old trotters and pacers based on conditions establishing eligibility to these final events. No pari-mutuel standardbred racetrack shall be awarded more than 50% of the championship final races in any calendar year. The commission shall schedule these final events so as to evenly alternate classes at each racetrack each year. After the allocation for the championship final races has been determined, the remaining funds to be distributed to licensed racing entities that conduct standardbred horse race meetings shall be divided equally among the licensed racing entities. Each licensed racing entity shall divide the funds received equally for each of:

(i) four two-year-old races; one pace for colts, one pace for fillies, one trot for colts and one trot for fillies; and

(ii) four three-year-old races; one pace for colts, one pace for fillies, one trot for colts and one trot for fillies.

(c) Purse money.--Each allotment shall provide purse money for the respective races. The purse money shall be in addition to any entry fees or other funds available.

(d) Entry restriction.--Entry for these races shall be limited to standardbred horses which were sired by a standardbred stallion regularly standing in Pennsylvania, and each race shall be designated a Pennsylvania sire stakes race. The commission shall adopt regulations as necessary to administer the entry restriction.

(e) Agricultural fairs and events.--

(1) The following shall apply:

(i) The remaining money in the Pennsylvania Sire Stakes Fund, up to a total of $75,000 for each agricultural fair and one-day or two-day events as defined in the commission's regulations, shall be divided equally among the agricultural fairs and one-day or two-day events.

(ii) No more than five one-day or two-day events may be authorized by the commission per year.

(iii) No more than two one-day or two-day events per county may be authorized by the commission except if, after a date established by the commission, the five events referenced under subparagraph (ii) conducting harness horse races for two-year-old and three-year-old harness horses have not been allocated.

(iv) Not less than $225,000 shall be allocated from the Pennsylvania Sire Stakes Fund and be divided equally among agricultural fairs and one-day or two-day events conducting harness horse races for two-year-old and three-year-old harness horses.

(2) Each fair or one-day or two-day event receiving funds under this subsection shall divide the total amount equally among all eligible races for two-year-old and three-year-old harness horses and shall apply the funds solely as additional purse funds. Only races to which entry is restricted to Pennsylvania-sired horses shall be eligible. The commission shall provide for and promulgate regulations necessary for the proper administration of racing provided for under this subsection, including, but not limited to, portable stall rentals at one-day or two-day events.

Cross References. Section 9337 is referred to in section 1406 of Title 4 (Amusements).

§ 9338. Fair fund proceeds.

(a) Distribution.--The Department of Agriculture shall distribute money in the fair fund annually, on or before March 1, for reimbursement for each county agricultural society and each independent agricultural society conducting standardbred horse racing during its annual fair, other than races for two-year-old colts and fillies and three-year-old colts and fillies, an amount of money equal to that used during their annual fair as purse money for standardbred horse racing, track and stable maintenance, starting gate rental and the cost of all standardbred horse racing officials required during their annual fair. The reimbursement amount may not be more than $13,000, a minimum of $4,000 of which must be used for purse money and the balance of the allotment per fair, not used for purse money over the minimum $4,000 allotment, shall be used for the specific purposes referenced above or otherwise the allotment shall be retained in the fund.

(b) Inspection.--The commission shall annually inspect each track facility at a county fair and advise each operating fair about track maintenance which is necessary to ensure adequate racing surface during the course of scheduled fairs and racing events. If it is the opinion of the commission that the fair society or event sponsor is not adequately financing track maintenance, the Department of Revenue shall surcharge the fair fund account of the fair society or event sponsor to effectuate the remediation. The commission may contract with, hire or otherwise consult with race track surface experts to carry out the provisions of this section.

§ 9339. Hearing.

An applicant, licensee or other person whose application has been denied or whose license has been suspended, revoked or not renewed may request a hearing before the commission. The provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action) shall apply, unless superseded by the commission's administrative regulations.

§ 9340. Prohibition of wagering.

(a) General.--No commissioner or employee of the commission shall wager upon the outcome of any horse race conducted at or simulcast to a track at which pari-mutuel wagering is conducted by any licensed racing entity regulated by the commission. No licensed racing entity shall permit any person who is under 18 years of age to wager at a horse race meeting conducted by the

licensed racing entity. No licensed racing entity shall permit any person who is under 18 years of age to attend a horse race meeting conducted by the licensed racing entity unless the person is accompanied by a parent or guardian. This section shall not be construed to prohibit persons under 18 years of age, who are legally employed, from being upon the racetrack premises for the sole purpose of engaging in the performance of their duties as employees.

(b) Fair racing.--Pari-mutuel wagering on horse races at any county or other political subdivision, agricultural or other fair shall not be authorized. No lottery, pool selling, bookmaking or any other kind of gambling upon the results of races, heats or contests of speed of horses shall be allowed at any fair or at any horse race meeting conducted in this Commonwealth, except those licensed to operate pari-mutuel wagering under the provisions of this chapter.

Cross References. Section 9340 is referred to in section 13F06 of Title 4 (Amusements).

§ 9341. Veterinarians and State stewards.

(a) General rule.--The commission shall have the authority to employ or contract with licensed veterinarians, stewards and other personnel deemed appropriate by the commission to serve at each horse race meeting conducted by a licensed racing entity. The commission may employ or contract with other individuals as shall be necessary to carry out the responsibilities of this section.

(b) Costs and compensation.--The costs and compensation of the horse racing veterinarians, State stewards and other personnel shall be fixed and paid by the commission.

§ 9342. Promotions and discounts.

The commission may approve a licensed racing entity to issue a free pass, card or badge for a special promotional program and seasonal discount ticket program.

§ 9343. Monitoring of wagering on video screens.

A licensed racing entity conducting pari-mutuel wagering shall display on video screens the approximate odds or approximate will-pays on each horse for each race as well as a combination of races, including, but not limited to, quinellas, exactas, perfectas and any other combination or pool of races. A display of approximate odds or approximate will-pays is not required where the wager is on horses in four or more races, such as Pick 4, Pick 5 or Pick 6. In addition to displaying the amount of money wagered, the approximate odds or approximate will-pays on each horse or combination of horses must be shown on video screens in each wagering division. For trifectas, in lieu of odds or approximate will-pays, the amount of money being wagered on each horse to win in the trifecta pool must be displayed on video screens separately from any other information. Information must be displayed from the opening of bets or wagering and be continually displayed until the wagering is closed. At least one video screen in each wagering division shall display the amount of money wagered on each horse involved in a trifecta pool.

§ 9344. Intrastate simulcasting.

(a) General rule.--The commission shall permit intrastate simulcasting of live horse racing between the licensed racing entities that conduct live racing.

(b) Simulcast signal.--The simulcast signal shall be encoded, and the racetrack receiving the simulcast signal may not send the signal anywhere other than a public location

authorized under section 9329 (relating to interstate simulcasting).

(c) Forms of pari-mutuel wagering.--All forms of pari-mutuel wagering described in section 9335 (relating to pari-mutuel pool distribution) shall be allowed on a horse race to be simulcasted under this section.

(d) Regulations.--The commission may promulgate regulations on wagering and the operation of horse racing.

(e) Computation of money wagered.--The money wagered by a patron on a horse race must be computed in the amount of money wagered each racing day for purposes of taxation under section 9334 (relating to State Racing Fund and tax rate).

(f) Definition.--As used in this section, the term "racing day" consists of a minimum of eight live races, except at thoroughbred tracks on Breeders' Cup Event Day.

§ 9345. Commingling.

(a) Applicability.--This section is applicable only to licensed racing entities that conduct thoroughbred racing.

(b) Race secretary.--The race secretary shall receive entries and declarations as an agent for the licensed racing entity for which the race secretary acts. The race secretary or an individual designated by the licensed racing entity may receive stakes, forfeits, entrance money, jockey fees and other fees, purchase money in claiming races and other money that can properly come into the race secretary's possession as an agent for the licensed racing entity for which the race secretary or designee is acting.

(c) Horsemen's Account.--A licensed racing entity shall maintain a separate account, to be known as a Horsemen's Account. Money owed to owners in regard to purses, stakes, rewards, claims and deposits shall be deposited into the Horsemen's Account. Funds in the account are recognized and denominated as being the sole property of owners. Deposited funds may not be commingled with funds of the licensed racing entity unless a licensed racing entity established an irrevocable clean letter of credit with an evergreen clause in favor of the organization which represents a majority of the owners and trainers racing with the licensed racing entity. The minimum amount of the credit must be the greater of $1,000,000 or 110% of the highest monthly balance in the Horsemen's Account in the immediate prior year. To calculate the monthly balance in the Horsemen's Account, the sum of the daily balances shall be divided by the number of days in the month. The evergreen clause must provide that:

(1) thirty days prior to the expiration of the letter of credit, the financial institution can elect not to renew the letter of credit;

(2) upon an election under paragraph (1), the financial institution must notify the designee of the organization that represents a majority of the owners and trainers racing with the licensed racing entity, by registered mail, return receipt requested, of the election not to renew; and

(3) the financial institution will honor the letter of credit for six months after expiration.

Purse money earned by owners shall be deposited by the licensed racing entity in the Horsemen's Account within 48 hours after the result of the race in which the money was earned has been declared official and the purse has been released by the commission.

(d) Accounting.--A licensed racing entity shall designate individuals authorized to receive and disburse funds from the Horsemen's Account. Individuals designated under this subsection

shall be bonded to provide indemnity for malfeasance, nonfeasance and misfeasance. A certified copy of the bond shall be filed with the commission.

(e) Examination, access and records.--The Horsemen's Account and the investment and deposit schedules relating to the account are subject to examination, at reasonable times, by a designee of the organization which represents a majority of the owners and trainers racing with the licensed racing entity and by the commission. The individual designated under subsection (d) shall provide each owner with access, at reasonable times during a racing day, to the amount of funds in the Horsemen's Account credited to that owner. At the close of a horse race meeting, the designated individual shall mail to each owner a record of deposits, withdrawals and transfers affecting the amount of funds in the Horsemen's Account credited to that owner.

(f) Auditing and monthly statements.--The Horsemen's Account shall be audited annually and at any other time determined by the commission. Monthly statements shall be provided to the designee of the organization which represents a majority of the owners and trainers racing with the licensed racing entity and the commission.

(g) Interest.--Fifty percent of the money earned as interest on funds in the Horsemen's Account shall be paid to the organization that represents a majority of the owners and trainers racing with the licensed racing entity on a weekly basis. The amount is for the benefit of the horsemen as determined by the organization that represents the majority of the owners and trainers racing with the licensed racing entity. The remaining 50% of the interest earned is for the benefit of the licensed racing entity that has the responsibility to fund the costs associated with the administration of the fund. Interest each month must be earned in an amount equal to the Federal Reserve Discount Rate on the first day of the month.

Cross References. Section 9345 is referred to in section 9318 of this title.

§ 9346. Standardbred horse racing purse money.

A licensed racing entity that conducts standardbred horse racing must place on deposit with the commission by March 1 of each year an irrevocable letter of credit equivalent to its average weekly purse total from the immediate prior year. The commission shall hold the letter of credit in trust for the standardbred horsemen racing at that licensed racing entity's horse race meeting if the purse checks are not issued or insufficient funds are available to cover the purse checks.

Cross References. Section 9346 is referred to in section 9318 of this title.

SUBCHAPTER C
ADDITIONAL LICENSING REQUIREMENTS FOR LICENSED RACING ENTITY, SECONDARY PARI-MUTUEL ORGANIZATION, TOTALISATOR AND RACING VENDORS

Sec.

9351. General license requirements.
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§ 9351. General license requirements.

(a) New application.--A licensed racing entity or secondary pari-mutuel organization seeking to offer electronic wagering to individuals within this Commonwealth must apply to the commission for a license by submitting a completed license application. Except for a licensed racing entity, the license shall take effect and the secondary pari-mutuel organization may begin operations after approval by the commission.

(a.1) Application.--A totalisator service provider or racing vendor, as determined by the commission, seeking to provide those services within this Commonwealth must apply to the commission for a license by submitting a completed application.

(b) Renewal applications.--

(1) A license for a totalisator or racing vendor must be renewed annually in accordance with this chapter.

(2) An electronic wagering license issued to a licensed racing entity or a secondary pari-mutuel organization shall be renewed annually. An electronic wagering renewal application shall be submitted on or before 120 days before the expiration of the license term. If the application is approved by the commission, the license renewal shall take effect January 1.

Cross References. Section 9351 is referred to in section 9352 of this title.

§ 9352. Licensing costs and fees.

Costs and fees are as follows:

(1) The applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants in accordance with the following:

(i) Except for a licensed racing entity, as an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of $50,000.

(ii) Any portion of the payment not required to complete the investigation shall be refunded to the applicant within 20 days of the granting, withdrawal or rejection of the initial license application.

(iii) To the extent additional costs will be necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within 10 days of receipt of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants in accordance with the following:

(i) The applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within 10 days of receipt of request.

(ii) Failure to submit the payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) Initial license fee:

(i) The fee for an electronic wagering license under section 9351(a) (relating to general license requirements) shall be $50,000. If an applicant that is also a Category 1 slot machine licensee or its corporate successor or affiliate paid the license fee under 4 Pa.C.S. § 1209 (relating to slot machine license fee), the fee required under this paragraph shall be deemed paid. A fee paid under this paragraph shall be deposited in the State Racing Fund, or, in the case of a deemed payment, transferred to the State Racing Fund upon certification of the Secretary of the Budget.

(ii) The fee for an initial totalisator or racing vendor license under section 9351(a.1) shall be $25,000 and shall be deposited in the State Racing Fund.

(4) License renewal fee:

(i) The fee for an electronic wagering license renewal under section 9351(b)(2) shall be $10,000. If an existing licensee under this section that is also a Category 1 slot machine licensee or its corporate successor or an affiliate paid the license fee under 4 Pa.C.S. § 1209, the fee required under this paragraph shall be deemed paid. A license renewal may not be issued until receipt of the license renewal fee. The license fee shall be deposited into the State Racing Fund, or, in the case of a deemed payment, it shall be transferred to the State Racing Fund.

(ii) The fee for the renewal of a totalisator or racing vendor license under section 9351(b)(1) shall be $5,000 and shall be deposited in the State Racing Fund.

(5) The commission shall be reimbursed for any additional costs required to implement and enforce this chapter.

(6) Beginning two years following the effective date of this paragraph, the commission may annually increase a fee, charge or cost provided for under this section by an amount not to exceed an annual cost-of-living adjustment calculated by applying the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent 12-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics, immediately prior to the date the adjustment is due to take effect.

(Oct. 30, 2017, P.L.419, No.42, eff. imd.)

2017 Amendment. Act 42 amended pars. (3) and (4).

§ 9353. License application procedures.

(a) Application for license.--An application for an initial or renewal license shall be in the form and manner prescribed by the commission in accordance with this chapter. The commission may deny a license to an applicant that provides false or misleading information on or omits material information from the application. The application shall include all of the following:

(1) The applicant's legal name.

(2) The location of the applicant's principal office.

(3) The name, address and date of birth of each principal with a 5% or greater share of ownership or beneficial interest in the applicant.

(4) Audited financial statements for the last three years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts.

(5) A detailed plan of how the wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be subsequent material changes in the plan of operations unless ordered by the commission or until approved by the commission after receiving a written request.

(6) A list of all personnel processing wagers on races made by residents of this Commonwealth. This list shall be kept current and be provided to the commission upon request.

(7) Copies of all documents required under this subsection by the commission.

(b) Review.--In reviewing an application, the commission may consider any information, data, report, finding or other factor available that it considers important or relevant to the determination of whether the applicant is qualified to hold a license, including all of the following:

(1) The integrity of the applicant and its principals, including:

(i) Whether the applicant or its principals are unsuitable.

(ii) Whether the applicant or its principals have been a party to litigation over business practices, disciplinary actions over a business license or refusal to renew a license.

(iii) Whether the applicant or its principals have been a party to proceedings in which unfair labor practices, discrimination or violation of government regulations pertaining to racing or gaming laws was an issue or bankruptcy proceedings.

(iv) Whether the applicant or its principals have failed to satisfy judgments, orders or decrees.

(v) Whether the applicant or its principals have been delinquent in filing tax reports or remitting taxes.

(2) The quality of physical facilities and equipment.

(3) The financial ability of the applicant to conduct wagering.

(4) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be commingled with other funds as required under this chapter.

(5) The management ability of the applicant and its principals.

(6) Compliance of the applicant with applicable statutes, charters, ordinances and administrative regulations.

(7) The efforts of the applicant to promote, develop and improve the horse racing industry in this Commonwealth.

(8) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in this Commonwealth.

(9) The economic impact of the applicant upon the Commonwealth.

Cross References. Section 9353 is referred to in section 9356 of this title.

§ 9354. Oral presentation by applicant.

(a) Application.--The application presentation shall be in accordance with all of the following:

(1) The commission may require an applicant to make an oral presentation prior to the ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

(2) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability.

(3) The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(b) Incomplete application.--If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

§ 9355. Additional information.

The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including all of the following:

(1) Copies of any documents used by the applicant in preparing the application.

(2) A list of each contract between the applicant and a third party related to operations. The commission may review the contracts at any time upon request.

§ 9356. Operations.

(a) Prior to operating requirements.--Before doing business in this Commonwealth, all of the following are required of a licensee:

(1) Be qualified to do business in this Commonwealth.

(2) Submit a copy of each document required to be filed with the Department of Revenue and each document related to an audit or investigation by any Federal, State or local regulatory agency to the commission.

(3) Remit to the commission a copy of each document required to be filed with any Federal, State or local regulatory agency.

(b) Requirements.--

(1) A licensee shall submit quarterly reports to the commission providing amounts wagered by residents in this Commonwealth and amounts wagered on races in this Commonwealth.

(2) A licensee shall contribute to the purse account in accordance with section 9331(d) (relating to pari-mutuel wagering at nonprimary locations).

(3) A licensee shall not commingle account funds with other funds.

(4) A licensee shall provide quarterly financial statements to the commission for the first calendar year of operation if the licensee does not have audited financial statements for the last three years as referenced in section 9353(a)(4) (relating to license application procedures).

(5) A licensee shall use and communicate pari-mutuel wagers to a totalisator licensed by the commission.

(6) A licensee shall operate and communicate with the totalisator in such a way as not to provide or facilitate a wagering advantage based on access to information and

processing of wagers by account holders relative to individuals who wager at licensed racing entities or simulcast facilities.

(7) All personnel processing wagers made by residents of this Commonwealth shall be licensed by the commission.

(8) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(9) Each account holder shall provide personal information as the licensee and the commission require, including all of the following:

(i) Name.

(ii) Principal residence address.

(iii) Telephone number.

(iv) Social Security number.

(v) Date of birth.

(vi) Other information necessary for account administration.

(10) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(11) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(12) An employee or agent of the licensee shall not disclose any confidential information except as follows:

(i) To the commission.

(ii) To the account holder as required by this chapter.

(iii) To the licensee and its affiliates.

(iv) To the licensed racing entity as required by the agreement between the licensee and the licensed racing entity.

(v) As otherwise required by law.

(13) The licensee shall provide each account holder a copy of account holder rules and the terms of agreement and other information and materials that are pertinent to the operation of the account.

(14) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(15) Each account shall be administered in accordance with the account holder rules and the terms of agreement provided to account holders, including:

(i) Placing of wagers.

(ii) Deposits to accounts.

(iii) Credits to accounts.

(iv) Debits to accounts.

(v) Refunds to accounts.

(vi) Withdrawals from accounts.

(vii) Minimum deposit requirements.

(viii) Fees per wager.

(ix) Rebates.

(16) Each licensee shall have protocols in place and shall publicize to its account holders when the wagers are excluded from a host racetrack's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's publicly accessible Internet website.

(17) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two additional years. A licensee shall also maintain complete records of the closing of an account for two years after closing. These records shall be provided to the commission upon request.

(18) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates and earnings for two years. These records shall be provided to the commission upon request.

(19) All wagering conversations, transactions or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of the communications shall be kept by the licensee for a period of two years. These tapes and other records shall be made available to the commission upon request.

(20) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalisator.

(21) A licensee shall not accept wagers if its recording system is not operable.

(22) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by residents of this Commonwealth.

(23) A licensee may suspend or close any account for violation of the account holder rules and the terms of agreement, or any other reason it deems sufficient, if the licensee returns to the account holder all money then on deposit within seven calendar days.

(Oct. 30, 2017, P.L.419, No.42, eff. imd.)

2017 Amendment. Act 42 amended subsec. (b)(2) and (10).

§ 9357. Transfers of licenses.

A transfer of licenses shall be done in accordance with the following:

(1) A license issued under this chapter shall not be transferable or assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. A request for approval of a substantial change in ownership shall be made on a form designated by the commission. Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within 15 days of the execution of the documents upon which the proposed nominal change in ownership will be based.

(4) For purposes of paragraph (3), notice is not required for any of the following:

(i) A nominal change in ownership if the licensee is a publicly traded corporation.

(ii) The transfer of an ownership interest in a licensed racing entity, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired

by an individual who holds the voting securities of the publicly traded corporation for investment purposes only.

(5) Any attempt to effect a substantial change in ownership under this section if not done so in writing shall be considered void by the commission.

§ 9358. Duration of license.

A license issued under this subchapter shall be valid for one calendar year for which the license is issued.

§ 9359. Penalties and enforcement.

All of the following apply:

(1) The commission shall have all of the rights, powers and remedies necessary to carry out this chapter and to ensure compliance with this chapter, including revocation, suspension or modification of a license and the imposition of fines under section 9325 (relating to power of commission to impose fines).

(2) With respect to an individual or entity that offers pari-mutuel wagering to residents of this Commonwealth without a license issued by the commission, the commission may take the measures deemed necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

(3) Upon the finding of a violation by a secondary pari-mutuel organization or totalisator of this chapter or of a commission regulation or order or upon the finding of unlicensed electronic or advanced deposit account wagering by an individual or entity, the commission may impose a fine as authorized under section 9325.

SUBCHAPTER D
COMPLIANCE

Sec.

9361. Tax compliance requirement.

§ 9361. Tax compliance requirement.

(a) Applicant.--An applicant must be tax compliant to be eligible for a license issued under this chapter. Upon receipt of an application for a license, the commission shall request the Department of Revenue to conduct a tax compliance review of the applicant.

(b) Licensees.--A licensee must be tax compliant to be eligible for renewal of a license issued under this chapter. Prior to renewing a license, the commission shall request the Department of Revenue to conduct a tax compliance review of the licensee.

(c) Commissioners and commission employees.--An individual must be tax compliant to be eligible to serve as a commissioner or to be employed by the commission. Commissioners and commission employees shall be subject to an annual tax compliance review to ensure they are tax compliant. This subsection may not apply to commission employees subject to a collective bargaining agreement.

(d) Contractors.--Each contractor of the commission shall be subject to an annual tax compliance review to ensure that the contractor is tax compliant.

(e) Review.--The tax compliance review under subsections (a) and (b) and the annual tax compliance review under subsections (c) and (d) must be performed on the dates as determined by the commission.

(f) Definitions.--For purposes of this section, the following words and phrases shall have the following meanings:

"Tax compliant." Being current with all applicable Commonwealth tax filing and reporting obligations for any applicable tax year and current with payment of any balance of tax, interest or penalty due the Commonwealth as determined by the Department of Revenue for an applicable tax year.

"Tax compliance review." The process by which the Department of Revenue determines whether an individual or entity is tax compliant.

SUBCHAPTER E
MEDICATION RULES AND ENFORCEMENT PROVISIONS

Sec.

9371. Mandatory requirements for medication rules.
9372. Establishment of Pennsylvania Race Horse Testing Program.
9373. Equipment, supplies and facilities.
9374. Costs of enforcement of medication rules or regulations.

Cross References. Subchapter E is referred to in section 9312 of this title.

§ 9371. Mandatory requirements for medication rules.

(a) Regulations for medication.--When a licensed racing entity conducts a horse race meeting with pari-mutuel wagering, the commission shall have in effect rules or regulations to control the use and administration of any medication and the use and administration of any device that affects the performance of a race horse. The commission may establish permitted tolerance levels and therapeutic dose allowances for all medication to be used or administered to a race horse. The commission shall adopt a comprehensive schedule of equine drugs, medications, therapeutic substances or metabolic derivatives which are authorized to be administered to race horses, including tolerance levels. In order to properly determine the schedule of drugs and the tolerance levels under this subsection, the commission may conduct research or contract with a vendor to conduct the research. The commission may consult with the Pennsylvania State Board of Veterinary Medicine, academic institutes and associations representing the majority of the horse owners and experts.

(b) Penalty.--The commission shall establish in their rules or regulations penalty provisions for the violation of these rules or regulations.

§ 9372. Establishment of Pennsylvania Race Horse Testing Program.

(a) Establishment.--There is established the Pennsylvania Race Horse Testing Program. The program shall be administered by the commission. All costs of the program shall be paid by the appropriations allocated under section 9374 (relating to costs of enforcement of medication rules or regulations).

(b) Purpose.--The purposes of the Pennsylvania Race Horse Testing Program are to analyze samples for the presence in race horses of any medication, to develop techniques, equipment and procedures, to collect and test for the presence of medication in race horses, to ascertain permitted tolerance levels or therapeutic dose allowances for medication, to offer consultation and advice to the public on all issues regarding the medication of race horses and to conduct research in medication issues involving race horses.

§ 9373. Equipment, supplies and facilities.

The costs of all equipment, supplies and facilities, except holding barns or stables, to be located at race horse meeting

facilities, grounds or enclosures or at other locations designated by the management committee shall be paid by the commission.

§ 9374. Costs of enforcement of medication rules or regulations.

(a) Authorization.--Beginning July 1, 2016, and each year thereafter, the General Assembly shall authorize the transfer of funds from the Pennsylvania Race Horse Development Trust Fund to the State Racing Fund to provide for each cost associated with the collection and research of and testing for medication, which shall include the cost of necessary personnel, equipment, supplies and facilities, except holding barns or stables, to be located at horse race facilities, grounds or enclosures or at other locations designated by the commission. All such costs shall be reviewed and approved by the commission. The transfer shall be made in 52 equal weekly installments during the fiscal year before any other distribution from the Pennsylvania Race Horse Development Trust Fund.

(b) Expiration.--(Repealed).

(Oct. 30, 2017, P.L.419, No.42, eff. imd.; May 29, 2020, P.L.158, No.23, eff. July 1, 2020)

2020 Repeal. Act 23 repealed subsec. (b).

2017 Amendment. Act 42 amended subsec. (a).

Cross References. Section 9374 is referred to in sections 9334, 9372 of this title; section 1405.1 of Title 4 (Amusements).

PART IX
GRANT PROGRAMS

Chapter

101. Very Small Meat and Poultry Processor Reimbursement Grant Program
103. Agriculture and Youth Development
105. Commonwealth Specialty Crop Block Grant Program
107. Urban Agricultural Infrastructure Grant Program
109. Farm-to-School Program

Enactment. Part IX was added July 1, 2019, P.L.255, No.36, effective in 60 days, and July 1, 2019, P.L.279, No.40, effective in 60 days. Act 40 overlooked the addition by Act 36, but the additions do not conflict in substance and have both been given effect in setting forth the text of Part IX.

CHAPTER 101
VERY SMALL MEAT AND POULTRY PROCESSOR REIMBURSEMENT GRANT PROGRAM

Sec.

10101. Short title of chapter.
10102. Legislative intent.
10103. Definitions.
10104. Grant program.
10105. Eligible costs.
10106. Final reimbursement.

Enactment. Chapter 101 was added July 1, 2019, P.L.255, No.36, effective in 60 days, and July 1, 2019, P.L.279, No.40, effective in 60 days. Act 40 overlooked the addition by Act 36,

but the additions do not conflict in substance and have both been given effect in setting forth the text of Chapter 101.

Chapter Heading. The heading of Chapter 101 was amended July 7, 2022, P.L.504, No.52, effective immediately.

§ 10101. Short title of chapter.

This chapter shall be known and may be cited as the Very Small Meat and Poultry Processor Reimbursement Grant Program. (July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10102. Legislative intent.

It is the intent of the General Assembly to support the development and expansion of current or future very small meat and poultry processing operations in this Commonwealth by offering reimbursement grants to cover the costs associated with:

(1) A grant of inspection from the USDA Food Safety and Inspection Service.

(2) Opening a new very small meat and poultry processing operation.

(3) Expanding the capacity of a current very small meat and poultry processing operation.

(4) A combination of paragraphs (1), (2) and (3).

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10103. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A person applying for a reimbursement grant under section 10104 (relating to grant program).

"Grant cycle." The period of time from when the department solicits applications for grants under section 10104 to final reimbursement.

"Grant of inspection." An inspection by the USDA Food Safety and Inspection Service certifying that products at a very small meat and poultry processing operation are produced in accordance with Federal law.

"Person." An individual, partnership, association, firm, corporation or any other legal entity.

"USDA." The United States Department of Agriculture.

"Very small meat and poultry processing operation." A person operating under a grant of inspection that meets the definition of "very small establishment" as described in 9 CFR 381.65(g)(1)(i) (relating to operations and procedures, generally).

"Very small meat processor." (Deleted by amendment).

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10104. Grant program.

(a) Availability.--Grants under this chapter shall only be offered to the extent that funding is made available to the department. The following shall apply:

(1) In the event funding is exhausted or otherwise unavailable, the department shall be under no obligation to provide grants under this chapter.

(2) Grant money may be prorated or offered as a percentage of actual costs, as determined by the department and set forth in an order by the secretary, to spread available money to a larger number of eligible applicants. The secretary shall transmit notice of an order issued under this chapter to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(b) Reimbursement grants.--A grant under this chapter shall be a reimbursement grant. The following shall apply:

(1) The amount of reimbursement shall be based on actual eligible costs submitted by an approved applicant within the grant cycle.

(2) Grant reimbursement money shall only be available for the eligible costs associated with:

(i) Meeting the requirements to obtain a grant of inspection.

(ii) Opening a new very small meat and poultry processing operation.

(iii) Expanding the capacity of a current very small meat and poultry processing operation.

(iv) A combination of subparagraphs (i), (ii) and (iii).

(c) Eligibility.--(Deleted by amendment).

(c.1) Eligibility.--An applicant may apply to receive reimbursement for eligible costs under section 10105 (relating to eligible costs) if the applicant is a very small meat and poultry processing operation and is either:

(1) currently operating under a grant of inspection; or

(2) upon completion of the approved project, the applicant will obtain a grant of inspection.

(c.2) Attestation.--

(1) An applicant shall attest to the eligibility requirements under subsection (c.1).

(2) The attestation shall be made under penalty of law and subject to 18 Pa.C.S. Ch. 49 (relating to falsification and intimidation).

(3) If a statement or material fact on the application is found to be false, grant money received by the applicant shall be returned to the department within 30 days of notification of the finding.

(d) Application procedure.--An applicant who desires to receive a reimbursement grant under this section shall submit a grant application on a form provided by the department. The application shall contain the following information demonstrating and attesting to:

(1) The applicant's name, the organization name, a business address and a telephone number.

(2) A list of corporate officers.

(3) The applicant's eligibility under subsection (c.1).

(4) A detailed plan, including the process being undertaken to meet the requirements necessary to obtain a grant of inspection as a very small meat and poultry processing operation. The plan shall outline the overall project and materials being requested, including a line item proposed budget, individual tasks required to complete the project, a detailed timeline for completion of project tasks and, if applicable, detailed descriptions of equipment or supplies required to complete the project, training, consulting, technical support and other services utilized.

(5) A detailed list of costs, including training and equipment costs, for which reimbursement is sought.

(6) An attestation signed by the applicant and subject to 18 Pa.C.S. Ch. 49 stating the applicant is in compliance, or will be in compliance after the approved project, with the Federal Meat Inspection Act (Public Law 59-382, 21 U.S.C. § 601 et seq.) or the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et seq.) to maintain a grant of inspection.

(e) Evaluation of application.--The department shall evaluate an application on the basis of:

(1) The ability of the applicant to complete the stated project within the stated timeline.

(2) The ability of the applicant to provide a detailed description of the project and project costs as required by subsection (d).

(3) The potential of the project to provide slaughter or meat or poultry processing capacity and services to this Commonwealth's livestock and poultry producers.

(4) The potential of the project to provide availability of Pennsylvania-produced meat or poultry products to consumers.

(July 7, 2022, P.L.504, No.52, eff. imd.)

Cross References. Section 10104 is referred to in section 10103 of this title.

§ 10105. Eligible costs.

The following costs, incurred during the term of the grant cycle in which the grant is awarded, shall be eligible for reimbursement:

(1) (Deleted by amendment).

(1.1) Consulting or other technical support services that directly support the development and maintenance of programs required to operate under a grant of inspection.

(2) Professional employee training and educational services and programs that support the development and maintenance of programs to operate under a grant of inspection. If a professional consultant is utilized, reasonable costs may be reimbursed, as determined by the department.

(3) Up to 85% of the actual costs of the purchase of meat or poultry slaughter or processing equipment or supplies. This paragraph does not include reimbursement of the cost of planning, erection, repair or modification of a structure or building or repair or installation of roofing or other physical structure improvement.

(4) The purchase of equipment or supplies directly related to employee safety.

(July 7, 2022, P.L.504, No.52, eff. imd.)

Cross References. Section 10105 is referred to in section 10104 of this title.

§ 10106. Final reimbursement.

(a) Required submission.--Reimbursement shall be based on the approved applicant's completion of the project and submission of the final costs related to expenses and materials in the applicant's approved grant project within the grant cycle. The submission shall include:

(1) (Deleted by amendment).

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(4) Documentation of actual expenditures for eligible costs approved in the grant application and invoices evidencing payment of the costs. The documentation may include invoices for hours of training or consultation.

(5) Documentation of the completion of the approved project. The documentation may include pictures and dates of training and equipment installation.

(6) Documentation demonstrating that the very small meat and poultry processing operation is operating under a grant of inspection.

(7) A written report related to:

(i) The completed project.

(ii) The expansion of meat or poultry processing capability.

(iii) Expanded services to this Commonwealth's livestock and poultry producers.

(iv) An increase to the availability of this Commonwealth's meat or poultry products to consumers.

(b) Distribution of final reimbursement.--Distribution of grant money to the approved applicant will occur upon the following:

(1) Submission and receipt of the information required under subsection (a).

(2) Final review and approval for completeness of the required submission and the eligible costs.

(3) A completed grant agreement between the department and an approved applicant.

(c) Assignment of grant money.--Grant money may only be distributed to the owner of the eligible establishment. The department may not assign grant money to a lessee, operator or person other than the owner of the eligible very small meat and poultry processing operation.

(July 7, 2022, P.L.504, No.52, eff. imd.)

CHAPTER 103
AGRICULTURE AND YOUTH DEVELOPMENT

Sec.

10301. Definitions.
10302. Board membership.
10303. Agriculture and Youth Organization Grant Program.
10304. Applications.
10305. Grants.
10306. Regulations.
10307. Funding.

Enactment. Chapter 103 was added July 1, 2019, P.L.255, No.36, effective in 60 days, and July 1, 2019, P.L.279, No.40, effective in 60 days. Act 40 overlooked the addition by Act 36, but the additions do not conflict in substance and have both been given effect in setting forth the text of Chapter 103.

§ 10301. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agriculture and youth organization." An organization composed mainly of youth, or an organization with programs that benefit youth, and organized to promote development in the areas of agriculture, community leadership, vocational training and peer fellowship. The term includes a school district.

"Board." The State Agriculture and Youth Development Board.

"Program." The Agriculture and Youth Organization Grant Program.

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10302. Board membership.

The board shall consist of the following members, with a majority of members constituting a quorum:

(1) The secretary or a designee, who shall serve as chairperson.

(2) The Secretary of Education or a designee.

(3) The chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate or a designee and the chairperson and minority chairperson of the

Agriculture and Rural Affairs Committee of the House of Representatives or a designee.

(4) One representative from the Pennsylvania Association of Agriculture Educators and one from the Penn State Cooperative Extension, both of whom shall be appointed by the Governor.

(5) The Statewide president of the Pennsylvania FFA.

(6) The 4-H Statewide Council President.

(7) Up to three representatives, each from a different Pennsylvania farm or rural organization having a youth program, whom shall be appointed by the secretary.

(8) A representative of an urban agriculture community program.

(9) A youth representative of an urban garden operation or another urban agriculture operation.

§ 10303. Agriculture and Youth Organization Grant Program.

(a) Program.--The department, in consultation with the board, shall establish a program of grants for agriculture and youth organizations qualifying to receive grants under this chapter, to be known as the Agriculture and Youth Organization Grant Program.

(b) Purpose.--Grants awarded under this chapter may be used for any of the following purposes:

(1) To cover the costs of special projects conducted by the organization and approved by the board.

(2) For educational or work force development programs conducted by the organization and approved by the board.

(3) For educational or work force development seminars and field trips conducted by the organization and approved by the board.

(4) For agricultural safety training programs conducted by the organization and approved by the board.

(5) For certain capital projects and equipment purchases approved by the board.

§ 10304. Applications.

(a) Application procedure.--An agriculture and youth organization may make application at the time, in the manner and containing information as the department may require. The department shall determine, from the information provided, whether the application is eligible for consideration by the board.

(b) Annual meeting.--The board shall meet annually to recommend to the department the awarding of grants to qualifying organizations.

(c) Other meetings.--The board shall meet at the call of the chairperson to conduct business related to the award of grants.

§ 10305. Grants.

(a) General rule.--The department shall make grants in an amount not to exceed $7,500 to qualifying agriculture and youth organizations upon the recommendation and approval of the board.

(b) Matching funds.--Grants in an amount not to exceed $25,000 shall be awarded to qualifying agriculture and youth organizations selected to receive the awards for the purposes of capital projects. Grants for capital projects must be matched by private money in an amount equal to the State grant.

(c) Annual allocation.--The board shall establish annual allocation limits for each fiscal year.

(July 7, 2022, P.L.504, No.52, eff. imd.)

2022 Amendment. Act 52 amended subsec. (a).

§ 10306. Regulations.

The department shall administer the provisions of this chapter and, with the approval of the board, shall prescribe and adopt program policy guidelines or regulations to administer and enforce this chapter. Until or unless supplanted by program policy guidelines or regulations adopted under this section, the program guidelines promulgated under the act of August 6, 1991 (P.L.326, No.33), known as the Agriculture and Rural Youth Development Act, shall be the policy guidelines for the program.

References in Text. The act of August 6, 1991, P.L.326, No.33, known as the Agriculture and Rural Youth Development Act, referred to in this section, was repealed by the act of July 1, 2019, P.L.279, No.40.

§ 10307. Funding.

For purposes of implementing the provisions of this chapter, the department may use:

(1) Any money appropriated by the General Assembly to the department to carry out the provisions of this chapter.

(2) Any other money, contributions or payments which may be made available to the department by the Federal Government or by any public or private source.

CHAPTER 105
COMMONWEALTH SPECIALTY CROP BLOCK GRANT PROGRAM

Sec.

10501. Declaration of purpose.
10502. Definitions.
10502.1. Establishment of program.
10503. Authority.
10504. Eligible applicants and projects.
10505. Allocation of money.
10506. Use of grant money by recipients.
10507. Audit and recordkeeping.
10508. Commonwealth Specialty Crop Block Grant Fund.
10509. Applicability.

Enactment. Chapter 105 was added July 1, 2019, P.L.279, No.40, effective in 60 days.

§ 10501. Declaration of purpose.

The purpose of this chapter is to enhance, but not replace, the Federal Specialty Crop Block Grant Program by establishing a Commonwealth Specialty Crop Block Grant Program to give priority to specialty crops that are not currently eligible for grant payments under the Federal Specialty Crop Block Grant Program. Funding will assist the growth, certification of seed and marketing of high-priority specialty crops, as defined by the secretary under this chapter.

§ 10502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Crop." Plants that are cultivated for sale, production, processing or subsistence. The term does not include wild plants.

"Eligible specialty crop." A specialty crop designated as a high-priority specialty crop by the secretary, with priority given to crops, plants and products that are not currently eligible for funding under the Federal Specialty Crop Block Grant Program.

"Federal Specialty Crop Block Grant Program." The Specialty Crops Competitiveness Act of 2004 (Public Law 108-465, 118 Stat. 3882).

"General evaluation criteria." The evaluation criteria established by the department and utilized for the Federal Specialty Crop Block Grant Program.

"Horticultural crop." A crop that is used by people for food, medicinal purposes or aesthetic gratification.

"Population density." The total population of this Commonwealth as determined by the most recent Federal decennial census, divided by the total area of this Commonwealth in square miles.

"Program." The Commonwealth Specialty Crop Block Grant Program established under section 10502.1 (relating to establishment of program).

"Rural municipality." A municipality of this Commonwealth with a population density less than the Statewide average population density or a total population less than 2,500, unless more than 50% of the population lives in an urbanized area, as defined by the United States Census Bureau.

"Silvicultural product." A product of a forest or woodland, including, but not limited to, timber.

"Specialty crop." A horticultural crop or silvicultural product, a plant cultivated and utilized for fiber or biofuel purposes or an apiary product.

"Urban municipality." A municipality of this Commonwealth not defined as a rural municipality.

§ 10502.1. Establishment of program.

The Commonwealth Specialty Crop Block Grant Program is established in the department.

Cross References. Section 10502.1 is referred to in section 10502 of this title.

§ 10503. Authority.

(a) Duties of department.--The department shall have the following duties:

(1) To administer this chapter in a manner consistent with the general evaluation criteria, including the application, evaluation and reporting processes required and employed under the annual Federal Specialty Crop Block Grant Program.

(2) To develop all necessary documents and transmit a notice of all parameters of the program, including eligible specialty crops, evaluation criteria, submittal dates, application and reporting forms and requirements and template grant agreements to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin and on the department's publicly available Internet website.

(b) Specific allocation and nonliability.--The program shall only be administered in years in which money is specifically allocated or received and made available to the department under this chapter for that purpose. The department shall not be liable for any commitment or for completion of a partially completed or partially funded project which cannot be completed due to the unavailability of Commonwealth money or future Commonwealth appropriations.

§ 10504. Eligible applicants and projects.

The following eligibility criteria shall apply to applicants and grant projects:

(1) State and local organizations, producer associations, academia, community-based organizations and

other eligible specialty crops stakeholders are eligible to apply.

(2) Projects shall enhance the competitiveness of eligible specialty crops and benefit the eligible specialty crop industry as a whole and may include, but are not limited to, projects such as:

(i) Increasing child and adult nutrition knowledge and consumption of specialty crops.

(ii) Participation of industry representatives at meetings of international standard setting bodies in which the Federal Government participates.

(iii) Improving efficiency and reducing costs of distribution systems.

(iv) Assisting all entities in the specialty crop distribution chains in developing good agricultural practices, good handling practices, good manufacturing practices and in cost-share arrangements for funding audits of such systems for small farmers, packers and processors.

(v) Investing in specialty crop research, including organic research to focus on conservation and environmental outcomes and enhancing food safety.

(vi) Developing new and improved seed varieties and specialty crops.

(vii) Pest and disease control.

(viii) Sustainability.

(3) To be considered an eligible specialty crop, a specialty crop must meet the parameters established by the secretary. Processed products shall consist of greater than 50% of the eligible specialty crop by weight, exclusive of added water.

(4) Grants may not be awarded to projects that directly benefit a particular commercial product or provide a profit to a single organization, institution or individual.

(5) Grants may be awarded to recipients and projects for up to two years.

§ 10505. Allocation of money.

Money that is allocated to or received by the department under section 10508 (relating to Commonwealth Specialty Crop Block Grant Fund) shall be allocated for administration of this chapter in accordance with the following formula:

(1) An amount of up to 8% of the money may be used by the department for administrative costs.

(2) An amount equal to 6.2% of the money shall be allocated to recipients and projects located in rural municipalities where at least 20% of the population has been below the Federal poverty line since 1990 based on census data.

(3) An amount equal to 3.8% of the money shall be allocated to recipients and projects located in urban municipalities where at least 20% of the population has been below the Federal poverty line since 1990 based on census data.

(4) The balance of the money remaining after making allocations under paragraphs (1), (2) and (3) shall be allocated to recipients and projects in a manner which seeks to distribute the money evenly among types of eligible specialty crops and, where practicable, in a manner that distributes the money across this Commonwealth.

§ 10506. Use of grant money by recipients.

(a) Recipients.--Money that is allocated to recipients by the department shall be used only for approved projects in

accordance with this chapter, program parameters and grant agreements.

(b) Violations.--It shall be unlawful for a person to violate:

(1) the terms or provisions of this chapter;

(2) the program parameters developed under this chapter; or

(3) a signed grant agreement established under this chapter.

§ 10507. Audit and recordkeeping.

(a) Requirements.--The department shall establish and enforce the audit and recordkeeping requirements as established under the annual Federal Specialty Crop Block Grant Program and publish the requirements on the department's publicly accessible Internet website. The department shall transmit notice of the audit and recordkeeping requirements to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(b) Authority to investigate.--The department may investigate the records of a recipient under this chapter. The recipient shall provide the recipient's records upon the department's request. A recipient shall allow the department to conduct on-site inspections as necessary to assure compliance with this chapter, the program parameters developed under this chapter or a signed grant agreement established under this chapter.

§ 10508. Commonwealth Specialty Crop Block Grant Fund.

(a) Establishment.--The Commonwealth Specialty Crop Block Grant Fund is established as a special nonlapsing fund in the State Treasury. All money placed into the fund and the interest the fund accrues are hereby appropriated to the department on a continuing basis for any activities necessary to meet the requirements of this chapter.

(b) Supplements to fund.--The Commonwealth Specialty Crop Block Grant Fund may be supplemented by money received from the following sources:

(1) State money appropriated to the department.

(2) Federal money appropriated to the department.

(3) Gifts and other contributions from public and private sources.

(July 7, 2022, P.L.504, No.52, eff. imd.)

2022 Amendment. Act 52 amended subsec. (a).

Cross References. Section 10508 is referred to in section 10505 of this title.

§ 10509. Applicability.

This chapter shall apply to the distribution of money of the Commonwealth Specialty Crop Block Grant Fund allocated or received by the department beginning with the fiscal year 2019-2020 and thereafter.

CHAPTER 107

URBAN AGRICULTURAL INFRASTRUCTURE GRANT PROGRAM

Sec.

10701. (Reserved).
10702. Definitions.
10703. Grant program.
10704. Distribution of grant money.
10705. Funding.

Enactment. Chapter 107 was added July 1, 2019, P.L.279, No.40, effective in 60 days.

§ 10701. (Reserved).

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10702. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Eligible project." A project that the department determines does one or more of the following:

(1) Improves agricultural infrastructure in an urban area.

(2) Improves or facilitates the aggregation of agricultural products in an urban area.

(3) Entails the sharing of resources among urban agricultural operations, agricultural producers or community organizations.

(4) Supports community or economic development in the project area.

"Person." An individual, partnership, association, firm, corporation or any other legal entity.

"Program." The Urban Agricultural Infrastructure Grant Program established under this chapter.

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10703. Grant program.

(a) Availability.--Grants under this chapter shall only be offered to the extent funding is made available to the department. The following apply:

(1) If funding is exhausted or otherwise unavailable, the department shall be under no obligation to provide grants under this chapter.

(2) Grant money may be prorated or offered as a percentage of actual costs, as determined by the department and set forth in an order by the secretary, to spread available money to a larger number of eligible projects. The secretary shall transmit notice of an order to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(b) Reimbursement grants.--Grants under this chapter shall be reimbursement grants. The following shall apply:

(1) The amount of a grant shall be based on actual eligible costs submitted by an approved applicant for an approved project.

(2) Grant money shall not exceed 85% of the costs of an eligible project.

(3) Grant money shall not be used to reimburse any portion of an in-kind contribution to an eligible project.

(4) Grant money may not be used to pay or reimburse wages or salaries of grant recipient staff.

(5) Grant money may not be used to reimburse any portion of the project costs which are being paid or reimbursed under another Federal or State grant program.

(6) A single applicant may not be awarded more than $100,000 in grants in any five-year period, calculated from the date the department awards the grant.

(c) Eligibility.--A person may apply to the department, in accordance with the program standards and requirements under subsection (d), for a determination by the department that a project is an eligible project that may receive a reimbursement grant under this chapter.

(d) Program standards and requirements.--The department shall, consistent with this chapter and any appropriation of

money for grants under this chapter, establish the terms and conditions for the application process for program reimbursement grants, including the maximum reimbursement grant amount an applicant may receive in any single fiscal year. The department shall transmit notice of the requirements to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(e) Application procedure.--An applicant who desires to receive a program reimbursement grant shall submit a grant application on a form provided by the department and in accordance with program standards and requirements. The application shall contain the following information and other information as required by the department:

(1) The applicant's name, business address and contact information.

(2) The details of the project for which reimbursement grant money is sought, including the following:

(i) A project budget.

(ii) A statement of the maximum amount of grant money sought for the project.

(iii) A project construction and implementation schedule.

(iv) A narrative identifying each entity that will assist in, participate in and benefit from the project.

(v) A description of how the project would improve agricultural infrastructure in an urban area.

(vi) A description of how the project improves or facilitates the aggregation of agricultural products in an urban area.

(vii) A description of how the project entails the sharing of resources among urban agricultural operations agricultural producers or community organizations.

(viii) A description of how the project supports community or economic development in the project area.

(ix) An attestation signed by the applicant, verifying the accuracy of the information presented on the application.

(x) Other information as the department may reasonably require.

(f) Grant awards.--The department shall award grants to applicants in accordance with this chapter and the applicable program standards and requirements.

(July 7, 2022, P.L.504, No.52, eff. imd.)

2022 Amendment. Act 52 amended subsecs. (a), (b) and (e)(2)(ii) and (viii).

§ 10704. Distribution of grant money.

The department shall issue program reimbursement grant money to pay any portion of the costs of an eligible project based upon the applicant's submission of a verified statement that the eligible project has been completed or implemented, including a statement of the project completion date, photos of the completed or implemented project with a narrative explanation of each photo, bills and invoices for which reimbursement grant money is sought and other information as the department may reasonably require.

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10705. Funding.

The department shall use money as appropriated by the General Assembly for grants under this chapter, and may also use any other money that is made available to the department for grants under this chapter, by Federal appropriation, State appropriation, donation or from any other source.

CHAPTER 109
FARM-TO-SCHOOL PROGRAM

Sec.
10901. Short title of chapter.
10902. (Reserved).
10903. Definitions.
10904. Grant program.
10905. Limitation on grants.
10906. Applications and review of applications.
10907. Disposition of grants.
10908. Administration and contracting.
10909. Regulations.
10910. Funding.

Enactment. Chapter 109 was added July 1, 2019, P.L.247, No.34, effective in 60 days.

Special Provisions in Appendix. See section 3 of Act 34 of 2019 in the appendix to this title for special provisions relating to continuation of prior law.

§ 10901. Short title of chapter.

This chapter shall be known and may be cited as the Farm-to-School Act.

§ 10902. (Reserved).

(July 7, 2022, P.L.504, No.52, eff. imd.)

§ 10903. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commission." The Commission for Agricultural Education Excellence established under section 1549.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Program." The Farm-to-School Program established under this chapter.

§ 10904. Grant program.

(a) Authorization.--The department, in consultation with the commission and the Department of Health, is authorized to establish a program to award grants for the purpose of developing the Farm-to-School Program in this Commonwealth.

(b) Eligibility.--Any school district, school, charter school, private school or center with prekindergarten classes, kindergarten classes, elementary classes or middle school classes through the eighth grade that participates in a Federal child nutrition program may submit an application to the department for funding a program.

(c) Program requirements.--The program shall contain the following elements:

(1) The procurement of food and food products or food-producing plants from a Pennsylvania farm.

(2) Nutrition and agriculture education, including integration into regular classroom subjects.

(3) Training of teachers, cafeteria staff and other educational staff on nutrition and agriculture education.

(4) The inclusion of parents, caregivers and community groups in educational activities.

(5) Field trips to Pennsylvania farms or other direct agricultural educational experiences which teach children about sources of food and Pennsylvania agriculture.

(d) Program options.--An eligible applicant may use a grant awarded under this chapter to establish a school garden or pollinator habitat and may use the school garden or pollinator habitat to meet the requirements under subsection (c).
(July 7, 2022, P.L.504, No.52, eff. imd.)

Cross References. Section 10904 is referred to in section 10906 of this title.

§ 10905. Limitation on grants.

(a) Matching.--Grant amounts shall be limited to 75% of the amount necessary to develop the program, not to exceed $15,000 annually, per school. Applicants may use in-kind support to match the amount granted.

(b) Conditions.--The secretary may approve a grant in an amount less than the requested amount. The secretary may also impose restrictions or special conditions upon issuance of the grant.

§ 10906. Applications and review of applications.

(a) Submission.--Applications for grants shall be submitted in a manner and form as prescribed by the secretary.

(b) Evaluation.--When reviewing applications, the secretary shall evaluate applications annually on the basis of all of the following:

(1) The ability of the applicant to complete the program.

(2) The ability of the applicant to incorporate all of the program requirements under section 10904(c) (relating to grant program).

(3) The location of the school in an area where a high percentage of the children are eligible to receive free or reduced-price school meals.

(4) The potential of the program to increase knowledge about nutrition and healthy eating habits for the children, their caregivers and the community.

(5) The potential of the program to increase knowledge about Pennsylvania agriculture for the children, their caregivers and the community.

(6) The ability of the applicant to procure Pennsylvania foods and products or plants for the applicant's program.

(7) The potential of the program to increase markets for Pennsylvania agricultural producers.

(8) The number of people who will be served by the program.

(9) The ability of the applicant to sustain the program.

(10) The overall performance of the applicant if a grant was received in a previous year.

(July 7, 2022, P.L.504, No.52, eff. imd.)

2022 Amendment. Act 52 amended subsec. (b).

§ 10907. Disposition of grants.

(a) Written agreement.--The department may require a written agreement describing the terms and conditions of the grant.

(b) Verification.--The department may require verification of grant expenditures.

(c) Criteria.--The department may establish criteria under which the department may demand the return of all or a portion of the grant money.

§ 10908. Administration and contracting.

Money appropriated for the program may be used for administrative purposes which execute the program, including contracting with one or more entities to carry out the provisions of this chapter.

§ 10909. Regulations.

The department shall promulgate regulations as it deems necessary to carry out the purposes of this chapter.

§ 10910. Funding.

Grants shall be awarded under the program to the extent money is made available by the General Assembly.

PART X
EMERGENCIES

Chapter

111. Agriculture Rapid Response Disaster Readiness Account

Enactment. Part X was added July 1, 2019, P.L.251, No.35, effective in 60 days.

CHAPTER 111
AGRICULTURE RAPID RESPONSE DISASTER READINESS ACCOUNT

Sec.

11101. Declaration of purpose.
11102. Definitions.
11103. Authority.
11104. Eligible disaster funding.
11105. Recordkeeping and audit.
11106. Cooperation.
11107. Agriculture Rapid Response Disaster Readiness Account.
11108. Applicability.

Enactment. Chapter 111 was added July 1, 2019, P.L.251, No.35, effective in 60 days.

§ 11101. Declaration of purpose.

The purpose of this chapter is to establish a restricted account within the department to provide emergency money for training, equipment and other resources necessary for rapid responses to transmissible diseases, plant pests, plant diseases, controlled and noxious weeds, foodborne illnesses and natural and other disasters affecting agriculture which pose an immediate danger to public or animal health, food safety or economic well-being in this Commonwealth.

§ 11102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The Agriculture Rapid Response Disaster Readiness Account established under section 11107 (relating to Agriculture Rapid Response Disaster Readiness Account).

"Controlled plant." As defined under section 1502 (relating to definitions).

"Hazardous substance." As defined under section 2303 (relating to definitions).

"Invasive species." A species declared to be invasive by the Governor's Invasive Species Council of Pennsylvania.

"Noxious weed." As defined under section 1502.

"Person." An individual, partnership, association, firm, corporation, local agency, agency of the Federal Government or the Commonwealth or other legal entity.

"Plant pest." As defined under the act of December 16, 1992 (P.L.1228, No.162), known as the Plant Pest Act.

"Transmissible disease." As defined under section 2303.

§ 11103. Authority.

(a) Authority and duty.--The department shall have the authority and duty to:

(1) Administer the provisions of this chapter.

(2) Allocate money in accordance with this chapter.

(b) Training programs.--The department may develop training programs and training program requirements and allocate money in a manner consistent with this chapter. Contracts awarded under this subsection shall be subject to 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code).

§ 11104. Eligible disaster funding.

Purposes for which money from the account may be used by the department shall include, but are not limited to, the following:

(1) To mitigate, contain, control, eradicate, prevent or limit the spread of any of the following if the secretary determines any of the following poses an immediate danger to public or animal health, food safety or economic well-being in this Commonwealth:

(i) Transmissible disease.

(ii) Hazardous substance contamination.

(iii) Plant pests.

(iv) Invasive species.

(v) Plant diseases.

(vi) Noxious weeds.

(vii) Controlled plants.

(viii) Foodborne illness.

(2) To assist in providing transportation of livestock feed from a commercial feed establishment in the event of a disaster declaration issued by the Governor that includes the department.

(3) To make grants for and acquire data regarding any item under paragraph (1). No more than $100,000 may be used for this purpose in a year.

(4) To provide additional financial assistance as may be requested in a declaration of disaster issued by the Governor that includes the department.

(5) To provide up to $250,000 annually to animal response teams recognized and approved by the Pennsylvania Emergency Management Agency for planning, developing and maintaining animal response and rescue capabilities consistent with standards and guidelines established by the agency in conjunction with the department.

§ 11105. Recordkeeping and audit.

(a) Eligible person receiving money.--The department shall require a person receiving money under this chapter to keep and provide upon request records as the department believes are necessary to ensure money is spent in accordance with this chapter. The records shall include the name and address of the person, evidence of the eligible disaster for which the money was received and a copy of each invoice and expenditure to account for the expenditure of money received. The department may request production of the documents and may copy and hold the documents as the department deems necessary. The department may enter onto the premises of the person in order to carry out the department's duties under this chapter.

(b) Department records.--The department shall keep a record of all expenditures from the account, which shall include the date, eligible purpose of the expenditure and any eligible entity that may have received the funding. The General Assembly may request a report, including the required records, from the

department on a fiscal year basis or as the General Assembly believes necessary.

§ 11106. Cooperation.

In order to increase the efficiency of the department regarding the administration and implementation of this chapter, the department may cooperate and enter into agreements with the appropriate regulatory agencies of the Federal Government and any other Commonwealth agency in furtherance of this chapter.

Cross References. Section 11106 is referred to in section 11107 of this title.

§ 11107. Agriculture Rapid Response Disaster Readiness Account.

(a) Establishment.--The Agriculture Rapid Response Disaster Readiness Account is established as a special nonlapsing account in the State Treasury. All money allocated to or supplements to the account and the interest collected on money and supplements shall be paid into the account. All money placed into the account and the interest the account accrues are appropriated to the department on a continuing basis for activities necessary to meet the requirements of this chapter.

(b) Supplements to account.--The account may be supplemented by money received from the following sources:

(1) State money appropriated to the department.

(2) Federal money appropriated to the department.

(3) Money received from other governmental agencies through an interagency agreement or memorandum of understanding.

(4) Gifts and other contributions from public and private sources.

(c) Account administration.--The department may adopt procedures for the use of money in the account, including the creation of subaccounts within the account for the purposes of allocation of money authorized under this chapter.

(d) Deposit and use of money.--An administrative action may not prevent the deposit of money into the account in the fiscal year in which the money is received. The money shall only be used for the purposes authorized under this chapter and shall not be transferred or diverted to any other purpose by administrative action, except as specifically provided for in section 11106 (relating to cooperation).

Cross References. Section 11107 is referred to in section 11102 of this title.

§ 11108. Applicability.

This chapter shall apply to the distribution of account money allocated or made available to the department beginning with the 2019-2020 fiscal year and each fiscal year thereafter. The department shall not be liable for a commitment or for completion of a partially completed or partially funded project which cannot be completed due to the unavailability of Commonwealth money or future Commonwealth appropriations.

PART C
MISCELLANEOUS PROVISIONS

Chapter

999. Miscellaneous Provisions

Prior Provisions. Former Part VIII, which related to the same matter, was added December 12, 1994, P.L.903, No.131 and

renumbered to Part C October 28, 2016, P.L.913, No.114, effective immediately.

CHAPTER 999
MISCELLANEOUS PROVISIONS

Sec.
99901. (Reserved).

Prior Provisions. Former Chapter 81, which related to the same matter, was added December 12, 1994, P.L.903, No.131 and renumbered to Chapter 999 October 28, 2016, P.L.913, No.114, effective immediately.

§ 99901. (Reserved).
(Nov. 23, 2010, P.L.1039, No.106, eff. 60 days; Oct. 28, 2016, P.L.913, No.114, eff. imd.)

2016 Amendment. Act 114 renumbered former section 8101 to section 99901.

APPENDIX TO TITLE 3
AGRICULTURE

Supplementary Provisions of Amendatory Statutes

1994, DECEMBER 12, P.L.903, NO.131

§ 2. Responsibility for certain regulations.

(a) Department of Environmental Resources.--The Department of Environmental Resources may not administer nor enforce 25 Pa. Code Chs. 151 (relating to food establishments), 153 (relating to shellfish), 155 (relating to food vending machines) and 157 (relating to public places) and § 191.4 (relating to food service).

(b) Department of Agriculture.--The provisions of 25 Pa. Code Chs. 151, 153, 155 and 157 and § 191.4 have the same force and effect as regulations promulgated by the Department of Agriculture under the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law. The Department of Agriculture shall administer and enforce 25 Pa. Code Chs. 151, 153, 155 and 157 and § 191.4.

(c) Renumbering regulations.--The Department of Agriculture shall deposit a notice with the Legislative Reference Bureau renumbering the regulations transferred to the department by subsections (a) and (b) and making at that time needed editorial changes. Thereafter, the Department of Agriculture may amend the regulations from time to time in accordance with law.

Explanatory Note. Act 131 added Parts I through VIII of Title 3.

§ 3. Transfers.

All personnel, allocations, appropriations, contracts, agreements, rights, obligations, equipment, files, records and other materials which are employed, expended or used in connection with the functions performed by the Department of Environmental Resources under sections 1917-A and 1920-A of the

act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, insofar as such sections pertain to 25 Pa. Code Chs. 151 (relating to food establishments), 153 (relating to shellfish), 155 (relating to food vending machines) and 157 (relating to public places) and § 191.4 (relating to food service) under the provisions of the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, and under the provisions of the act of August 6, 1991 (P.L.321, No.32), known as the Egg Refrigeration Law, are transferred to the Department of Agriculture. The transfer of personnel is made with the same force and effect as if the personnel had been originally assigned to the Department of Agriculture. The transfer of allocations and appropriations is made with the same force and effect as if the allocations and appropriations had been originally made to the Department of Agriculture. The transfer of contracts, agreements, rights and obligations is made with the same force and effect as if the contracts, agreements, rights and obligations had been originally those of the Department of Agriculture. The transfer of equipment, files, records and other materials is made with the same force and effect as if the items had been originally the property of the Department of Agriculture.

§ 4. Continued powers.

The Department of Agriculture shall continue to exercise the powers and perform the duties by law heretofore vested in and imposed upon the Department of Environmental Resources by the act of May 23, 1945 (P.L.926, No.369), known as the Public Eating and Drinking Place Law; by sections 1917-A and 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, insofar as they relate to the regulation of food establishments, shellfish, public places and food service at organized camps and campgrounds; and by the act of August 6, 1991 (P.L.321, No.32), known as the Egg Refrigeration Law.

§ 5. Exemption from certain registration fee.

A food establishment which is licensed as a public eating and drinking place pursuant to the applicable provisions of the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, shall not be subject to the registration fee imposed by section 14(c) of the act of July 7, 1994 (P.L.421, No.70), known as the Food Act.

1998, OCTOBER 16, P.L.768, NO.94

Preamble

The General Assembly finds and declares as follows:

(1) It is the policy of the Commonwealth to conserve, protect and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products.

(2) It is also the policy of the Commonwealth that aquaculture is an agricultural activity which adds to the diversity of our food and fiber production system and should be conserved, protected and encouraged to develop and grow within this Commonwealth.

(3) Aquacultural production is a vital sector of Pennsylvania's agriculture, supplying fresh foodfish, ornamental species and over 70% of the trout stocked in the northeastern United States.

(4) Aquaculture has grown globally from 6,600,000 metric tons in 1966 to 15,900,000 metric tons in 1993. Aquaculture will continue to grow to contribute further to the Commonwealth's economy insofar as Pennsylvania is an industry leader and aquaculturally friendly.

(5) It is the policy of the Commonwealth that all levels of government work together under the leadership of the Department of Agriculture to create an atmosphere conducive to the further development and expansion of our aquacultural industry.

Explanatory Note. Act 94 added Chapter 42 of Title 3.

§ 2. Duties of Department of Agriculture.

The Department of Agriculture is directed to analyze needs for aquacultural research to determine the desirability and feasibility of acquiring via a public or private consortium one or both of the Federal fish research stations located within this Commonwealth should either or both of the stations become available.

2001, DECEMBER 13, P.L.876, NO.97

§ 2. Transition provisions.

(a) Licenses and registrations.--A license granted or registration made under the act of May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, in effect on the effective date of this act shall remain valid and in effect until its scheduled expiration date.

(b) Continuation of regulations.--Except to the extent that they are inconsistent with any provisions of this act, regulations promulgated under the act of May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, in effect on the effective date of this act shall continue in effect unless subsequently modified by regulations promulgated by the department under this act.

(c) Transfer of funds.--All funds made available to the department pursuant to the act of May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, which remain unexpended, uncommitted and unencumbered as of the effective date of this act, shall be transferred to the Agronomic Regulatory Account.

Explanatory Note. Act 97 added Chapters 67 and 69 of Title 3.

2004, NOVEMBER 29, P.L.1302, NO.164

§ 3. Continuation of regulations.

Except to the extent that they are inconsistent with any provisions of this act, regulations promulgated under the act of August 17, 1965 (P.L.354, No.187), known as The Pennsylvania Seed Act of 1965, and the act of April 11, 1929 (P.L.488, No.205), referred to as the Certified Seed Law, in effect on the effective date of this act shall continue in effect unless subsequently modified by regulations promulgated by the department under this act.

Explanatory Note. Act 164 amended section 6725 and added Chapter 71 of Title 3.

2005, JULY 6, P.L.112, NO.38

Preamble

The General Assembly of the Commonwealth of Pennsylvania declares that the Commonwealth has a vested and sincere interest in ensuring the long-term sustainability of agriculture and normal agricultural operations in a manner that is consistent with State policies and statutes. In furtherance of this goal, the Commonwealth has enacted statutes to protect and preserve agricultural operations for the production of food and other agricultural products.

The Commonwealth has also empowered local government units to protect the health, safety and welfare of their citizens and to ensure that normal agricultural operations do not negatively impact upon the health, safety and welfare of citizens.

It is the purpose of this act to ensure that when local government units exercise their responsibilities to protect the health, safety and welfare of their citizens in regulating normal agricultural operations, that ordinances are enacted consistent with the authority provided to local government units by the laws of this Commonwealth.

The General Assembly of the Commonwealth of Pennsylvania further declares that the intent of this act is to provide for the resolution of conflicts that may arise from the regulation of normal agricultural operations. It is further the intent of this act that this process:

(1) provides a dispassionate and unprejudiced legal review of local ordinances regulating normal agricultural operations to determine whether a local ordinance complies with the Commonwealth's existing statutes;

(2) reduces the costs associated with determining whether a local ordinance complies with the Commonwealth's existing statutes by utilizing current State resources and mechanisms; and

(3) provides for a prompt and fair resolution to the conflict.

Explanatory Note. Act 38 added Chapters 3 and 5 of Title 3.

§ 4. Continuation of prior law.

The addition of 3 Pa.C.S. Ch. 5 is a continuation of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act. The following apply:

(1) Except as otherwise provided in 3 Pa.C.S. Ch. 5, all activities initiated under the Nutrient Management Act shall continue and remain in full force and effect and may be completed under 3 Pa.C.S. Ch. 5. Orders, regulations, rules and decisions which were made under the Nutrient Management Act and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 3 Pa.C.S. Ch. 5. Contracts and obligations entered into under the Nutrient Management Act are not affected nor impaired by the repeal of the Nutrient Management Act.

(2) Except as set forth in paragraph (3), any difference in language between 3 Pa.C.S. Ch. 5 and the Nutrient Management Act is intended only to conform to the style of

the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Nutrient Management Act.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of 3 Pa.C.S.:

(i) Section 501.

(ii) Section 502(5).

(iii) The definitions of "animal housing facility," "concentrated animal feeding operation," "manure management facility" and "odor management plan" in section 503.

(iv) Section 504(1.1) and (2).

(v) Section 506.

(vi) Section 507.

(vii) Section 508.

(viii) Section 509.

(ix) Section 510(a), (d) and (e).

(x) Section 511(a).

(xi) Section 513.

(xii) Section 514(a), (c) and (d).

(xiii) Section 515.

(xiv) Section 519.

(xv) Section 521.

(xvi) Section 522.

(4) The addition of 3 Pa.C.S. Ch. 5 does not affect the terms of office of the members of the Nutrient Management Advisory Board in office on the effective date of this paragraph.

2006, JUNE 29, P.L.206, NO.51

Preamble

The General Assembly finds and declares as follows:

A Cervidae livestock operation is a normal agricultural operation of this Commonwealth. Cervidae livestock facilities and their equipment are considered to be agricultural facilities and equipment. Uses related to the farming and harvesting of cervids are to be considered agricultural uses regulated by the department.

The Secretary of Agriculture shall assure that Cervidae livestock operations are afforded all rights, privileges, opportunities and responsibilities of normal agricultural operations.

Explanatory Note. Act 51 amended sections 2303, 2380.1, 2380.4, 2380.5, 2380.6 and 2380.9 of Title 3.

2010, NOVEMBER 23, P.L.1039, NO.106

§ 7. Continuation of prior rules, regulations and standards.

Except to the extent they are inconsistent with any provision of this act, the rules, regulations and standards adopted by the department prior to the effective date of this act under authority of the statutes repealed in section 8 of this act, shall continue in effect unless subsequently modified or superseded by regulations promulgated by the Secretary of Agriculture of the Commonwealth.

Explanatory Note. Act 106 amended, added or repealed the heading of Chapter 57, Subchapters A and B of Chapter 57, Chapter 59, Chapter 61 and sections 6502, 6503, 6504, 6506, 6507, 6508, 6509, 6510 and 8101 of Title 3.

2016, OCTOBER 28, P.L.913, NO.114

§ 6. Continuation of prior law.

The addition of 3 Pa.C.S. Ch. 93 is a continuation of Article XXVIII-D of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. The following apply:

(1) Except as otherwise provided in 3 Pa.C.S. Ch. 93, all activities initiated under Article XXVIII-D of The Administrative Code of 1929 shall continue and remain in full force and effect and may be completed under 3 Pa.C.S. Ch. 93. Orders, regulations, rules and decisions which were made under Article XXVIII-D of The Administrative Code of 1929 and which are in effect on the effective date of section 5(2) of this act shall remain in full force and effect until revoked, vacated or modified under 3 Pa.C.S. Ch. 93. Contracts, obligations and collective bargaining agreements entered into under Article XXVIII-D of The Administrative Code of 1929 are not affected nor impaired by the repeal of Article XXVIII-D of The Administrative Code of 1929.

(2) Except as set forth in paragraph (3), any difference in language between 3 Pa.C.S. Ch. 93 and Article XXVIII-D of The Administrative Code of 1929 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article XXVIII-D of The Administrative Code of 1929.

(3) Paragraph (2) does not apply to the addition of 3 Pa.C.S. § 9336(b), (b.1), (c), (d), (d.1) and (e).

Explanatory Note. Act 144 renumbered the former Part VIII and Chapter 81 headings and section 8101 and added a new Part VIII of Title 3 and repealed Article XXVIII-D of the act of April 9, 1929, P.L.177, No.175, known as The Administrative Code of 1929.

§ 7. Applicability.

The following shall apply:

(1) The addition of 3 Pa.C.S. § 9336(b), (c), (d), (e)(1) and (f) shall apply retroactively to February 23, 2016.

(2) The addition of 3 Pa.C.S. § 9336(a.1), (b.1), (d.1) and (e)(2) shall apply January 1, 2017.

2019, JULY 1, P.L.247, NO.34

§ 3. Continuation of prior law.

Continuation is as follows:

(1) (Reserved).

(2) The addition of 3 Pa.C.S. Ch. 109 is a continuation of the act of November 29, 2006 (P.L.1621, No.184), known as the Healthy Farms and Healthy Schools Act. The following apply:

(i) Except as otherwise provided in 3 Pa.C.S. Ch. 109, all activities initiated under the Healthy Farms and Healthy Schools Act shall continue and remain in full force and effect and may be completed under 3 Pa.C.S. Ch. 109. Orders, regulations, rules and decisions which were made under the Healthy Farms and Healthy Schools Act and which are in effect on the effective date of section 2 of this act shall remain in full force and effect until revoked, vacated or modified under 3 Pa.C.S. Ch. 109. Contracts, obligations and collective bargaining agreements entered into under the Healthy Farms and Healthy Schools Act are not affected nor impaired by the repeal of the Healthy Farms and Healthy Schools Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 3 Pa.C.S. Ch. 109 and the Healthy Farms and Healthy Schools Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Healthy Farms and Healthy Schools Act.

(iii) Subparagraph (ii) does not apply to the addition of the following provisions:

(A) 3 Pa.C.S. § 10903.

(B) 3 Pa.C.S. § 10904(a) and (b).

(C) 3 Pa.C.S. § 10907(c).

Explanatory Note. Act 34 added Chapter 109 of Title 3.

2019, JULY 1, P.L.263, NO.37

§ 3. Continuation of prior law.

Continuation is as follows:

(1) The addition of 3 Pa.C.S. Ch. 6 is a continuation of the act of December 12, 1994 (P.L.900, No.130), known as the Agriculture-Linked Investment Program Act. The following apply:

(i) Except as otherwise provided in 3 Pa.C.S. Ch. 6, all activities initiated under the Agriculture-Linked Investment Program Act shall continue and remain in full force and effect and may be completed under 3 Pa.C.S. Ch. 6. Orders, regulations, rules and decisions which were made under the Agriculture-Linked Investment Program Act and which are in effect on the effective date of section 2 of this act shall remain in full force and effect until revoked, vacated or modified under 3 Pa.C.S. Ch. 6. Contracts, obligations and collective bargaining agreements entered into under the Agriculture-Linked Investment Program Act are not affected nor impaired by the repeal of the Agriculture-Linked Investment Program Act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 3 Pa.C.S. Ch. 6 and the Agriculture-Linked Investment Program Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Agriculture-Linked Investment Program Act.

(iii) Subparagraph (ii) does not apply to the addition of the following provisions:

(A) 3 Pa.C.S. § 602.

(B) The definitions of "agricultural erosion and sedimentation plan," "best management practices," "Conservation District Law," "eligible borrower," "manure management plan," "nutrient management plan," "odor management plan" and "The Clean Streams Law" in 3 Pa.C.S. § 603.

(C) 3 Pa.C.S. § 604.

(D) 3 Pa.C.S. § 605(a)(2) and (3), (c)(1) and (d)(1).

(2) (Reserved).

Explanatory Note. Act 37 added Chapter 6 of Title 3.

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§ 3. Continuation of prior law.

The addition of 3 Pa.C.S. Ch. 11 is a continuation of Article XXIV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 3 Pa.C.S. Ch. 11, all activities initiated under Article XXIV of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 3 Pa.C.S. Ch. 11. Orders, regulations, rules and decisions which were made under Article XXIV of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2 of this act shall remain in full force and effect until revoked, vacated or modified under 3 Pa.C.S. Ch. 11. Contracts, obligations and collective bargaining agreements entered into under Article XXIV of the Tax Reform Code of 1971 are not affected nor impaired by the repeal of Article XXIV of the Tax Reform Code of 1971.

Explanatory Note. Act 74 added Chapter 11 of Title 3.