

**AGRICULTURE CODE (3 PA.C.S.) - OMNIBUS AMENDMENTS**

**Act of Dec. 18, 1996, P.L. 1028, No. 155**

**Cl. 03**

Session of 1996

No. 1996-155

SB 509

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, adding provisions relating to weights and measures; regulating the use and sale; providing for the inspection of weighing and measuring devices; regulating the sale and packaging of commodities; authorizing the regulation of persons engaged in selling, installing and repairing commercial weighing and measuring devices; providing for certain standards, for testing and for the sale and packaging of certain commodities; providing for the licensing of public weighmasters and defining their powers and duties; regulating the sale and delivery of solid fuel and other commodities sold by weight; regulating the manufacture, sale, offering for sale, giving away and use of weights and measures and of weighing and measuring devices; providing for the approval and disapproval of such weighing and measuring devices; regulating the delivery of light fuel oil to domestic consumers; providing for certain powers and duties of the Department of Agriculture; imposing penalties; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part VI of Title 3 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

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. Miscellaneous Provisions

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).

"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.

"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.

#### 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.

§ 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.

§ 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. The department shall certify only such individuals who 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. Any program instituted under this paragraph shall include testing and inspection performance standards, reporting procedures, random inspection and testing by State inspectors of weights and measures 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 State inspectors of weights and measures, 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 State 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 State 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 State 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 State inspector and city and county sealers of weights and measures.

§ 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.

§ 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) Annual inspections.--Notwithstanding subsection (a), it shall be the duty of the department at least once within a 12-month period, or more frequently if deemed necessary, to assure that all commercially used small capacity retail computing scales, retail package shipping scales, vehicle scales, small platform scales which weigh items to 1,000 pounds, truck-mounted

fuel oil meters, truck-mounted liquid petroleum gas meters, compressed natural gas meters and retail motor fuel dispensers 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 requirements of this subsection, provided such inspection and testing is performed in accordance with all applicable standards and procedures adopted under section 4110(a)(4) (relating to specific powers and duties of department; regulations), provided that State inspectors of weights and measures shall conduct inspection and testing of a sample of devices inspected and tested by Certified Examiners of Weights and Measures.

(c) General testing and inspection of scanning devices.-- Notwithstanding any other provision of this chapter to the contrary, within the 12-month period ending on June 30, 1998, and every 12-month period thereafter, the department shall test and inspect to ascertain if they are correct all commercially used Universal Product Code scanning systems and Price Look Up devices. 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 annual 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.

§ 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.

§ 4115. Training program.

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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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).

§ 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).

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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, corn meal 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, corn meal 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 avoirdupois weights of 3, 5, 10, 15, 20, 25, 50 and 100 pounds and multiples of one hundred pounds. Packages in units of less than three pounds shall be permitted.

(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.

§ 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.

§ 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.

- 4150. Enforcement and regulations.
- 4151. Licenses.
- 4152. Weighmasters' certificates.
- 4153. Preparation of weighmaster's certificate.
- 4154. Use of approved weighing device required.
- 4155. Scale requirement.
- 4156. Disposition of copies of certificates.
- 4157. License required; definition.
- 4158. Suspension or revocation of licenses.
- 4159. Prohibited acts.
- 4160. Sales by weight.
- 4161. Separation required.
- 4162. Substitution of another purchaser in weighmaster's certificate.
- 4163. Authorization to inspect and direct to nearest scales.
- 4164. Weighmaster's certificate required.
- 4165. Small lots.
- 4166. Exception for boatloads or railroad carloads.
- 4167. Rules and regulations.
- 4168. Sales by employer-producer to employees.
- 4169. Existing licenses.

§ 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 or 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.

§ 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.

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.

§ 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  
MISCELLANEOUS PROVISIONS

Sec.

4190. Rules and regulations.

4191. Offenses and penalties.

4192. Temporary or permanent injunctions.

4193. Disposition of funds.

4194. Validity of prosecutions.

§ 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.

§ 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.

§ 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.

Section 2. The following acts and parts of acts are repealed:

Act of May 11, 1911 (P.L.275, No.177), entitled "An act to provide for the appointment of county and city inspectors of weights and measures; providing for their compensation and expenses; prescribing their duties; prohibiting vendors from giving false or insufficient weights; and fixing the penalties for the violation of the provisions hereof."

Act of May 5, 1921 (P.L.389, No.187), entitled "An act to regulate and control the manufacture, sale, offering for sale, giving away, and use of weights and measures and of weighing and measuring devices in the Commonwealth of Pennsylvania; providing for the approval and disapproval of such weights, measures, and devices by the Bureau of Standards; and prescribing penalties."

Act of July 19, 1935 (P.L.1356, No.427), referred to as the Solid Fuel Weight Regulation Law.

Act of May 11, 1949 (P.L.1116, No.330), entitled, as amended, "An act to regulate deliveries of light fuel oil to domestic consumers; conferring powers and imposing duties on the Department of Agriculture and the inspectors of weights and measures of the several counties and cities; and prescribing penalties."

Act of April 28, 1961 (P.L.135, No.64), known as the Public Weighmaster's Act.

Act of December 1, 1965 (P.L.988, No. 368), known as the Weights and Measures Act of 1965.

Section 3. This act shall take effect in 60 days.

APPROVED--The 18th day of December, A. D. 1996.

THOMAS J. RIDGE