

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1671 Session of  
2017

INTRODUCED BY P. COSTA, D. COSTA, DeLUCA AND PASHINSKI,  
JULY 21, 2017

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
JULY 21, 2017

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, in weights and measures, further providing for definitions, for office and working standards and equipment, for specific powers and duties of department and regulations, for testing and inspections of standards, for general testing and inspections, for registration and report of inspection and testing of weighing and measuring devices used for commercial purposes, for police powers, right of entry and stoppage, for powers and duties of director and inspector, for city and county sealers and deputy sealers of weights and measures, appointment and powers and duties, for method of sale of commodities, for butter, oleomargarine and margarine, for fluid dairy products, for flour, cornmeal and hominy grits, for licenses, for weighmasters' certificates, for preparation of weighmaster's certificate, for scale requirement, for disposition of copies of certificates, for suspension of revocation of licenses, for sales by weight, for meter required, for investigations and for disposition of funds, providing for interim procedures and establishing the Weights and Measures Restricted Account.

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

Section 1. The definition of "weights and measures" in section 4102 of Title 3 of the Pennsylvania Consolidated Statutes is amended to read:

§ 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:

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"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 commercial 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.] a retail food facility required to be licensed or registered under Chapter 57 (relating to food protection). 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.

Section 2. Sections 4107, 4110(a)(4), 4111, 4112(b) and (d), 4114, 4120, 4121 and 4122(b) of Title 3 are amended to read:  
§ 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, in accordance with a verification schedule published by the department as a notice in the Pennsylvania Bulletin, the office standards by direct comparison with the State standards and the field standards by comparison with the office standards.

§ 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:

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(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. A Certified Examiner of Weights and Measures may not conduct inspections of weights and measures that are subject to inspection and enforcement by a local government unit under a memorandum of understanding as described under section 4125 (relating to division of responsibilities) unless the memorandum of understanding so provides or the Certified Examiner of Weights and Measures obtains the written permission of the local government unit to conduct the inspections.

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§ 4111. Testing and inspections of standards.

(a) City and county 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.

(b) Office standards, field standards and departmental equipment.--The State Metrology Laboratory shall inspect and certify the accuracy of the office standards and field standards described under section 4107 (relating to office and working standards and equipment) and of the equipment used by the department to carry out the provisions of this chapter.

§ 4112. General testing and inspections.

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(b) Inspections.--Notwithstanding subsection (a), it shall be the duty of the department at intervals not greater than 18 months, or less frequently if in accordance with a schedule issued by the department or more frequently if deemed necessary, 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.

\* \* \*

(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.] (Reserved).

§ 4114. Registration and report of inspection and testing of weighing and measuring devices used for commercial purposes.

(a) General rule.--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.] Subchapter B of Chapter 57 (relating to food safety). A retail food facility that is required to be licensed under Subchapter A of Chapter 57 (relating to retail food facility safety) shall register its weighing and measuring devices at the same time that it submits its annual license fee. 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.]

(b) Registration fees for certain weights and measures.--The department may establish, by regulation, fees for the registration of weighing and measuring devices described under subsection (a). The regulation may exempt weighing and measuring devices that are inspected by Certified Examiners of Weights and Measures from all or part of the registration fee.

§ 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.] (Reserved).

§ 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.--

(1) 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). A city or county to which a delegation is made may charge the owners of weights and measures delineated in the memorandum of understanding reasonable registration fees, license fees or inspection fees for the time during which the delegation remains in effect.

(2) If an entity to which the department has delegated powers and duties under paragraph (1) elects to surrender a portion of the delegation, the entity shall do all of the following:

(i) At least six months prior to the surrender date, provide the department with advance written notice of the surrender date and the specific powers and duties to be surrendered as of that date.

(ii) At least two months prior to the surrender date, provide the department with a comprehensive roster of all the weights and measures with respect to which the entity is surrendering powers and duties to the department, containing the same information and in the same format in which the surrendering jurisdiction maintains these records or in another format that is acceptable to both the department and the surrendering jurisdiction.

(iii) Effective on or before the surrender date, terminate the weights and measures registration fee, license fee or inspection fee that the surrendering jurisdiction charges with respect to weights and measures identified in the roster described in subparagraph (ii).

(iv) Within 30 days following the surrender date, pay the department a sum equal to the sum of any weights and measures registration fee, license fee or inspection fee received by or due to the surrendering jurisdiction and covering any period that extends beyond the surrender date, prorated so that the department receives that portion of the fee that is applicable to the period

beyond the surrender date.

(v) Provide reasonable assistance to the department as necessary to efficiently transfer the surrendered powers and duties to the department.

(3) If an entity to which the department has delegated powers and duties under paragraph (1) elects to surrender a portion of that delegation and does not comply with all the requirements of paragraph (2)(i), (ii), (iii), (iv) and (v), the department shall not assume these powers and duties.

§ 4122. City and county sealers and deputy sealers of weights and measures; appointment, powers and duties.

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(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).

Section 3. Section 4127 of Title 3 is amended by adding a

subsection to read:

§ 4127. Method of sale of commodities.

\* \* \*

(a.1) 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 this chapter or by regulation issued by the department.

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Section 4. Sections 4135, 4136, 4137, 4151(c) and (e), 4152, 4153, 4155, 4156, 4158, 4160, 4180(a), 4187.6(a) and 4193 of Title 3 are amended to read:

§ 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.] (Reserved).

§ 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.] (Reserved).

§ 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.] (Reserved).

§ 4151. Licenses.

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(c) Fee.--The applicant shall pay to the department a license fee of \$60[, which] or a greater fee amount established by the department through notice published in the Pennsylvania Bulletin. The notice shall be published at intervals of no less than two years. License fees shall be remitted to the State Treasurer through the Department of Revenue for deposit in the Weights and Measures Restricted Account. 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, for deposit in the Weights and Measures Restricted Account.

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(e) Suspension or revocation.--After [a hearing and upon due notice to the licensee] providing the licensee with notice and an opportunity for a hearing, 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.

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§ 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 or a vendor number or other unique identifier by which the weighmaster can identify the name and address of the seller.
- (3) The name and address of the purchaser or a vendor number or other unique identifier by which the weighmaster can identify 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) General rule.--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.

(b) Weight values.--For purposes of subsection (a), weight values entered on a weighmaster's certificate are personally determined by the licensed public weighmaster if the licensed

public weighmaster:

(1) is physically present at the weighing or is viewing the weighing in real time by electronic means;

(2) can view the referenced weight values on the scale or weighing device during the weighing; and

(3) can prevent the electronic issuance of the weighmaster's certificate if the weighmaster's certificate is generated by electronic means.

§ 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.] may not:

(1) use a scale to weigh a load which exceeds the normal or rated capacity of the scale; or

(2) engage in multiple-draft weighing where the vehicle exceeds the length of the scale, unless the multiple-draft weighing is allowed as an exception under the National Institute of Standards and Technology Handbook 44.

§ 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. A licensed public weighmaster may retain weighmasters' certificates in electronic format if the licensed public weighmaster can immediately produce the certificates in paper format for the referenced inspection.

§ 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,] providing the licensee with notice and an opportunity for a hearing, 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.]

§ 4160. Sales by weight.

Any commodity that is weighed for commercial purposes 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.

§ 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] as otherwise specified in writing by the customer. The seller or deliverer shall maintain the receipts for two years in an orderly and retrievable manner.

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§ 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] section 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.

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§ 4193. [Disposition of funds] Weights and Measures Restricted Account and disposition and appropriation 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.]

(a) Weights and Measures Restricted Account.--

(1) The Weights and Measures Restricted Account is established.

(2) All money paid into the State Treasury under the provisions of this chapter shall be paid into the account.

(3) Any interest accrued on the money in the account shall be credited to the account for the purpose of meeting the requirements under this chapter.

(a.1) Appropriation.--The General Assembly shall appropriate as much money and interest from the account as necessary to pay all or part of the costs associated with the following:

(1) The salaries of the employees of the department in administering the duties under this chapter.

(2) The expenses of the secretary and the department, including equipment and training expenses, in administering the duties under this chapter.

(a.2) Deposit in account.--When the proceeding is instituted by the department, money received from fines and civil penalties shall be paid into the account for the use of the department in administering the provisions under this chapter.

(b) Local share.--Notwithstanding subsection [(a)] (a.2), 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] Money 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.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Account." The Weights and Measures Restricted Account established under subsection (a).

Section 5. Title 3 is amended by adding a section to read:  
§ 4195. Interim procedures.

The department may promulgate, adopt and use guidelines to facilitate the speedy implementation of the provisions under this chapter. The guidelines:

(1) Shall be published in the Pennsylvania Bulletin.

(2) Shall not be subject to review under any of the

following:

(i) Section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(ii) Section 204(b) or 301(10) of the act of October

15, 1980 (P.L.250, 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.

(3) 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 be replaced by regulations which shall be promulgated, adopted and published as provided by law.

Section 6. This act shall take effect in 60 days.