CHAPTER 5. UPC SCANNING SYSTEMS AND PLU DEVICES

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Authority

The provisions of this Chapter 5 issued under the Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4101—4194, unless otherwise noted.

Source

The provisions of this Chapter 5 adopted May 7, 1999, effective May 8, 1999, 29 Pa.B. 2460, unless otherwise noted.

Cross References

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

GENERAL

§ 5.1. Purpose.

Section 4112(c) of the act (relating to general testing and inspections) requires the inspection of all commercially used UPC scanning systems and PLU devices

within this Commonwealth by June 30, 1999, and thereafter at intervals of no greater than 12 months. It is the purpose of this chapter to accomplish the following:

(1) Establish the Department's specifications, tolerances and procedures with respect to the inspection of UPC scanning systems and PLU devices, and supplant Chapter 39 (Reserved) as authorized in section 4112(d) of the act.

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

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

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

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

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

§ 5.2. Requirement of annual testing and inspection.

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

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

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

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

(2) The inspection is unannounced.

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

(4) The private certification program has registered with the Department in accordance with § 5.21 (relating to registration).

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

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

§ 5.3. Testing and inspection standards.

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

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

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

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

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

§ 5.4. Certified UPC/PLU inspector.

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

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

(a) *General*. A certified UPC/PLU inspector is qualified to perform the annual testing and inspection of a commercially used UPC scanning system or PLU device which is required under section 4112(c) of the act (relating to general testing and inspections). A certified UPC/PLU inspector—including a certified UPC/PLU inspector acting as part of a private certification program—may inspect UPC scanning systems or PLU devices owned, used or leased by a per-

son with respect to which the certified UPC/PLU inspector is an employe or agent if the inspection is conducted on an unannounced basis under section 4112(c) of the act.

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

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

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

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

(c) *Fees.* A certified UPC/PLU inspector may not charge a fee for inspection and testing services, unless that person is acting as part of a private certification program, or that person is an employe of a city or county and is acting in accordance with a memorandum of understanding entered into with the Department under section 4125 of the act.

§ 5.6. Certification requirements.

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

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

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

(b) *Persons certified under interim guidelines.* A UPC/PLU inspector's certificate issued in accordance with Chapter 39 (relating to Reserved) authorized by section 4112(d) of the act (relating to general testing and inspections) shall be considered a UPC/PLU inspector's certificate issued under this chapter.

§ 5.7. Training courses.

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

(b) *Current approved NIST/NCWM training courses.* The current approved NIST/NCWM training courses are the "NIST/NCWM Price Verification Training" course and the "NIST/NCWM Price Verification Instructor's Training"

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course. An approved training course may be conducted by a person who has successfully completed the NIST/NCWM price verification instructor's training course.

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

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

Cross References

This section cited in § 5.6 (relating to certification requirements).

§ 5.8. Applying for certification.

(a) *Application required.* A person who is at least 18 years of age and has successfully completed an approved training course (as described in § 5.7 (relating to training courses)) within 2 years of the date of application may apply to be certified as a UPC/PLU inspector. Certification is granted through issuance of the certificate described in § 5.9 (relating to UPC/PLU inspector's certificate).

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

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

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

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

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

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

(6) The date of the application.

(7) Other information the Department might reasonably require to determine eligibility for certification.

(c) *Departmental action on application.* The Department will, within 30 days of receiving an application, mail the applicant a UPC/PLU inspector's certificate, a disapproval notice or a request for additional clarification or documentation. If

the Department requests additional clarification or documentation, its review and consideration of the application will cease until the requested material is received, at which time the 30-day review period will begin again.

§ 5.9. UPC/PLU inspector's certificate.

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

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

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

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

(3) A unique identification number.

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

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

(6) Other information the Department might reasonably include.

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

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

Cross References

This section cited in 70 Pa. Code § 5.8 (relating to applying for certification).

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

A UPC/PLU inspector's certificate is valid for 3 years from the date it is issued, unless it is suspended or revoked earlier in accordance with the procedures in § 5.15 (relating to suspension or revocation of certification).

Cross References

This section cited in 70 Pa. Code § 5.9 (relating to UPC/PLU inspector's certificate).

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

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

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

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

§ 5.12. Inspections: reporting procedures.

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

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

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

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

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

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

Cross References

This section cited in 70 Pa. Code § 5.2 (relating to requirement of annual testing and inspection); and 70 Pa. Code § 7.4 (relating to report by inspectors).

§ 5.13. Inspections: enforcement levels.

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

§ 5.14. Inspection and testing by the Department.

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

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

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

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

Cross References

This section cited in 70 Pa. Code § 5.15 (relating to suspension or revocation of certification).

§ 5.15. Suspension or revocation of certification.

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

(1) Violates a provision of this chapter.

(2) Violates a provision of the act.

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

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

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

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

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

Cross References

This section cited in 70 Pa. Code § 5.14 (relating to inspection and testing by the Department).

§ 5.16. Certified UPC/PLU inspector list.

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

(1) The name and address.

(2) The telephone number.

(3) The fax number, if available.

(4) The expiration date of certification.

(5) The unique identification number of the UPC/PLU inspector's certificate.

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

PRIVATE CERTIFICATION PROGRAMS

§ 5.21. Registration.

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

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

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

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

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

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

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

Cross References

This section cited in 70 Pa. Code § 5.2 (relating to requirement of annual testing and inspection).

§ 5.22. Requirements and fees.

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

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

§ 5.23. Program list.

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

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

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APPENDIX A

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

PRICE VERIFICATION REPORT

Page ___ of ___

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

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

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

Comments/Remarks:

Report Acknowledgement
Name/Title _____
Inspector _____ Time In: _____
Time Out: _____

Evaluation of Results:
___ Sample- ___ Not on File= ___ Adjusted Sample
___ Errors+ ___ Adjusted Sample= ___ Error in %
Accuracy ___ % Ratio: ___ Overcharges ___ Undercharges

☐ **Reinspection will be made within 30 days.**

Original white - Bureau copy **Pink - Inspector's copy** **Yellow - Company copy**

[Next page is 6-1.]

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