

**Testimony to the Pennsylvania Senate Consumer Protection and Professional
Licensure Committee
Presented by Russell C. Redding, Secretary of Agriculture
April 14, 2010**

Good Morning Chairman Tomlinson, Chairperson Boscola and distinguished members of the Senate Consumer Protection and Professional Licensure Committee. On behalf of the Department of Agriculture, I would like to thank you for the opportunity to appear before you to discuss the Department's efforts in implementing the Certified Examiner of Weights and Measures (CEWM) Program within the Bureau of Ride and Measurement Standards. I have received many inquiries regarding the program and I appreciate the invitation to discuss the merits of the implementation plan as well as answer any questions you may have.

The Pennsylvania Consolidated Weights and Measures Act (Act 155 of 1996) established the program called the Certified Examiner of Weights and Measures Program. At the same time the Act was amended to create the CEWM program, the language was amended to provide counties and cities of the first, second or third class the ability to choose whether or not they wanted to fund a Weights & Measures program within their borders. Previously the Act mandated that all counties and cities of the first, second or third class maintain a program. This change in the language has a profound effect on the way that localities address consumer protection and on the Department of Agriculture.

In the years since 1996, over 40 local programs have been handed over to the Commonwealth. Currently the Bureau has responsibilities in all 67 counties for at least one type of device. The 18 counties and 2 cities that continue to maintain their programs have worked collectively with the state to enhance the level of consumer protection that our citizens and visitors expect. These programs could serve as the model for other counties and cities of the first, second or third class who would consider reinstating or their Weights and Measures program. Many of the county programs are structured to be self-funded through a schedule of fees charged to the device and system owners by a required annual registration. Not only does this ensure that the inspectors are able to maintain an accurate record of where devices and systems are located but it enables the program to have access to a consistent source of funding. The Department is grateful for the service that the 18 county and 2 city programs provide to the consumers and visitors of this Commonwealth.

One of the most frequently asked questions that the Department of Agriculture has received regarding the implementation of the CEWM program is, why have we waited until now to invest in a program that was authorized in 1996? In order to respond to that question, it would be helpful to first provide you with a better understanding of the landscape and the nature of the work the Bureau of Ride and Measurement Standards, Weights and Measures Division is mandated by law to perform. Under the Act, the Department is responsible for inspecting and testing weighing and measuring devices on an annual basis. With over 150,000 such devices and systems under the jurisdiction of the Commonwealth, this is a monumental task.

The landscape has changed tremendously through the years as we have experienced the proliferation of weighing and measuring devices and systems. As stores have grown in size and their use of technology has increased, our role and duties have also changed. Previously, it was normal to have 1-2 gas pumps and 1 scale at your retail store. Today a retail store can have as many as 20 gas pumps and 84 scales; the number of weighing and measuring devices has increased exponentially.

In recognition of the trend of counties handing their programs back to the state, the Department of Agriculture began discussions with device owners as early as 2006 in order to gauge their interest in a voluntary CEWM program. Initial interest was not there and so program implementation was delayed. However, with the recent downturn in the economy, business and government was forced to reevaluate the way they operate. When looking at all of the dynamics –requirements of the law, local governments transferring programs and a need to support the private sector, we believe that now is the time to launch the CEWM program.

Under Act 155 of 1996, has a program in the Bureau of Ride and Measurement Standards under which sellers, installers and repairers of weighing and measuring devices are required to register with the Bureau on an annual basis. They are also required to register any commercially used weighing and measuring devices with the Bureau. The seller, installer, repairer is exempt from registration of a device when the device is a UPC scanning system or a Price Look-Up device. There are over 1,200 people registered at this time. Many of the candidates for the CEWM program will be drawn from this pool of 1,200 who already have an established relationship with the Bureau.

It is important to note that participation in the CEWM program is voluntary at both the device owner level and the device support system level. A device owner has the option to have a State Inspector conduct the annual inspection and test of their weighing and measuring device or they may choose to utilize the service of a CEWM. Prior to the full implementation of the program, the Bureau will notify device owners of the option to participate in the program if they choose. The device owner will only have to notify the Bureau of Ride and Measurement Standards of their decision prior to utilizing a CEWM. Interest from device owners is a major component of the success of the CEWM program. The program cannot succeed without the active voluntary participation of device owners and the community that supports these devices.

The path to becoming a CEWM is no small task. Regulations require that a candidate complete a National Institute of Standards and Technology (NIST) –approved training course. This training is at minimum 3 days and will be conducted by a Department of Agriculture experienced Weights & Measures Supervisor. A candidate must have at least 6-months of experience in servicing or inspecting the device for which they are applying. Prior to beginning the training course, a candidate must successfully complete the NIST Handbook 44 Self-Study Course. A pre-test will be held on the first day of class and a score of 80% or better on the final examination must be achieved. The Department also requires a satisfactory result from a criminal background check to be conducted by the

Pennsylvania State Police. In addition, there is a significant monetary investment that must be made by the CEWM candidate. The training course is at a cost of \$100 and must be repeated every 3 years. Annual certification of testing equipment can cost from \$100-\$500. Testing equipment for a small scale is \$1,400 and the investment for larger equipment can be up to \$40,000 for a special prover unit for the Liquid Petroleum Gas Meter device. As you can see, the course to becoming a CEWM is extensive and will require considerable commitment and investment on the part of the candidate.

Regulations pursuant to the Act established a list of eight categories and types of weighing and measuring devices which a CEWM may inspect. Those devices include: 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. While establishing guidelines for the program, a determination was made that the CEWM program may only be applied to devices under the direct responsibility of the Department of Agriculture. Where a Memorandum of Understanding (MOU) exists with a county/city Weights & Measures Program, the device(s) under the MOU may not be inspected by a CEWM. This is an important point as it serves to maintain consistency for the county/city programs. They will not experience any change or impact to their programs as they have been established.

Oversight and auditing of individual CEWM's will be the most important tool that the Department will have to ensure that consumer confidence remains high and that devices are providing the most accurate weight and measure during every commercial transaction. Regulations pursuant to this Act establish a strict requirement that the Department *will* conduct random inspection and testing of a sample of devices that have been inspected and tested by a CEWM to determine whether the CEWM conducted the inspection and testing in accordance with the Act. (§ 4.14. Inspection and testing by the Department). The Bureau intends to perform these inspections on 25% of the work performed by a new CEWM for a 6-month probationary period, then maintain at least a 10% random inspection rate for third-party CEWM's and 25% for device-owner affiliated CEWM's. As the program progresses, the Bureau has the ability to adjust this rate at any time. But the regulations require that the random inspections and testing include a representative sample of each of the types of devices which a CEWM may inspect.

Certification is awarded on an individual basis, independent of who actually owns the device to be inspected and tested. The CEWM must personally perform the inspection and certify the results. The Department will hold a CEWM personally responsible for the results and the CEWM will be held liable for any punitive action for fraudulent practices, including the revocation of certification and civil penalties of up to \$10,000 per violation. An additional layer of protection for consumers is the requirement that a CEWM affix a non-repetitive numbered security seal on the device at the conclusion of an inspection for which they have approved the device as accurate. They will also affix the Department of Agriculture seal with the 1-877-007-TEST hotline number for consumers to register a complaint. The seal will alert the customer to the fact that the device was inspected and

tested by a CEWM but on the behalf of the Department of Agriculture. A device will not be inspected and tested without the knowledge of the Department. CEWM's will file their reports with the Bureau and can expect that a random number of those devices will receive a second inspection. These reports will be posted on the Department's website for public view.

I believe that the consumers of this Commonwealth will see an overall benefit from the CEWM program. This program puts more "boots on the ground" and will create a larger network of oversight of weighing and measuring devices statewide. Prior to the implementation of the program, people who were selling, installing and repairing these devices had no duty to report to the Department of Agriculture if a device was out of compliance. Now a CEWM has that duty to verify compliance as well as report that in an official capacity. Remember, a CEWM risks a penalty of up to \$10,000 and revocation of their credentials if they misrepresent the accuracy of a device. This program will serve to create a larger base of knowledge not only of the mechanical and technical aspects of devices but it will allow the further sharing of information on where there may be repeat issues with device owners. This creates additional protection for consumers as again, it puts more eyes and ears out in the field.

A similar program exists under the Act which requires regulations for the Universal Product Code (UPC) scanning system and Price Look Up (PLU) device program. Although the two programs were established by the same legislation, they have distinct differences in mandated oversight. The UPC/PLU program is unique in that it is the only aspect in Weights & Measure where the consumer has direct and immediate proof of the transaction. They have the ability to compare their receipt to the marked price. The Act provides for the Bureau to oversee the UPC/PLU program with audits as necessary. In comparison, the CEWM program is for devices where the true weight or measure is "unknown". i.e. sales of products done by volume. Every device covered under the CEWM program encapsulates the unknown. The Legislature in 1996, specifically mandated random inspections of the work performed on these devices under the CEWM program Whereas under the UPC/PLU program, the Legislature only envisioned oversight and auditing as needed, the CEWM program demands oversight and auditing.

The Department of Agriculture is committed to Act 155 of 1996 and the success of the CEWM program and will ensure that consumer protection remains the focus. The core mission of the Bureau of Ride and Measurement Standards, Weights and Measures Division is to make sure Pennsylvania consumers get what they paid for. I appreciate the work of all the consumer advocates and the great work of this Committee and our shared goal of keeping dollars in the pockets of people who live and work in this Commonwealth.

Thank you again for inviting me to speak with you about the CEWM program. I appreciate your time and attention this morning and I welcome any questions you may have for me.