

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Weights & Measures - Registered Service Person 2018

Rule Number(s): 901:6-8-(01-06)

Date: July 16, 2018

Rule Type:

X New

X 5-Year Review

X Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Pursuant to HB 131 passed by the 131st General Assembly, a service person who is employed by a commercially used weighing and measuring device servicing agency shall register with the director of agriculture. A “service person” is an individual who installs, services, repairs, reconditions, or places into service a commercially used weighing and measuring device for any type of compensation. The rules in this package outline the new mandatory requirement of registration. Further, the rules have been updated to be more navigable and understandable.

OAC 901:6-8-01 establishes the definitions as used in the chapter. The existing OAC 901:6-8-01 is proposed to be rescinded and replaced. The rescission is due to the Legislative Service Commission’s guide on administrative rule drafting which states that if more than 50% of an existing rule has been amended it shall be rescinded and replaced with a new version. A significant portion of the existing OAC 901:6-8-01 has been retained in the remaining rules of this chapter.

OAC 901:6-8-02 outlines the application process for registered service persons. Individuals must submit an application and seventy-five dollar biennial registration fee to the Department in order to be considered a complete application. Further, the rule requires all applicants to demonstrate their working knowledge of weighing and measuring devices for which the applicant intends to be registered. Applicants must pass an examination to demonstrate their skills and experience.

OAC 901:6-8-03 establishes a voluntary registration for service agencies. Service agencies employ service persons to provide services. The rule outlines the application process.

OAC 901:6-8-04 outlines recordkeeping requirements. Each service person must utilize forms approved by the department to ensure that the required information is present. Further, service persons must submit their service report form within seven days after a device is serviced, restored to service, or placed into service.

OAC 901:6-8-05 requires service persons to submit their standards and testing equipment to the Department or a NIST approved lab within a two-year period. This testing ensures that their standards are within accepted tolerances.

OAC 901:6-8-06 establishes requirements regarding security seals. Prior to breaking a security seal, the serviceperson must notify the department or local jurisdiction pursuant to ORC 1327.61.

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2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 1327.50 and 1327.502

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The Department is tasked with protecting Ohio businesses and consumers by ensuring products are accurately measured and sold. This registration process ensures that the individuals installing and repairing weighing and measuring devices have the requisite knowledge and skill to do so accurately. These requirements help to ensure that Ohioans are receiving the exact amount of product purchased.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These rules are judged as being successful when inspectors find few violations and receive few complaints from consumers.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On June 21, 2018, the proposed amended rule was sent to the following stakeholders, *via* email. Stakeholders were given until July 11, 2018 to email their comments to the Department:

Jack Irvin	Ohio Farm Bureau
Tony Seegers	Ohio Farm Bureau
Yvonne Lesicko	Ohio Farm Bureau

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Joe Logan	Ohio Farmers Union
Linda Borton	Ohio Farmers Union
Frances Lesser	County Auditor's Association
Russ Vires	Mettler-Toledo Inc.
Henry Kellogg II	Tolt Solutions
Kurt Leib	Capital Advocates
Stratt Pinagel	Wal-Mart Corporation
David Boykin	NCR Corporation
John Bradbury	Eagle Fabrication
Chris Geers	Strack Scales
Ben Stokes	Valero
Lou Straub	Fairbanks Scales
Jennifer Rhoads	OPMCA
Kristin Mullins	Ohio Grocers
Tom Fontana	Soybean Council
Mark Holtgreven	Holtgreven Scale
Chris Guay	Proctor & Gamble
Andrew Brechbuhler	Brechbuhler Scales
Jack Pangraizo	LTS Scale
David Biro Sr.	Brio Scales
John Kolenski	Kroger Company
John Spencer	Mulch Manufacturing
John Spirtoff	Bob's Meter Testing
Edward Luthy	Schenck Process

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Patrick Moody	All American Scale
William Rogers	AES Scale
Fred Gottfried	Ashland Scale
Lt. William Menendez	OH State Patrol
David Calix	NCR Corporation
Steve Smith	Buckeye Scale
Gordon Johnson	Gilbarco Inc.
Randy Moses	Wayne Fueling Systems
Derek Dalling	Ohio Propane Association
Dave Thomas	Retail Data Systems
Francyne Klein	Cromco LLC
Jake Schaffer	Schaffer Metal Products Inc.
Mike Looney	Hobart
David Lemmon	Hobart
Dawn Ulatowski	OCS Technologies
Doug McLish	Luckey Oil Equipment
John Pfister	Kanawha Scales
Betsy Musick	Musick's Service Maintenance
Rich Vanaman	Filing Scale
Steve Smith	Buckeye Scale
Jeff Griffith	Marathon Petroleum
C. Preston Yarnell	C. H. Bradshaw
Rory Williams	Liquid Meter Services
AL Wilhelm	Wilhelm Bottled Gas

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Christian Zeigler	API
Judd Templin	Ohio Ethanol Producers
Marilyn Herman	Herman & Associates
Pete Thuman	Accuracy Scales
Jeff Kohl	AES Scale
Randy Humbert	Antibus Scales
Bobby Edison	Associated Scale
John Betz	Cincinnati Scale
K. Schulte	Jones & Frank
Jessica Engle	Oscar W. Larson
Dave Wright	Petro-Com Corp.
Tammy Chase	Reliable Construction
Tom McCommas	Wayac Scales

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

On July 9, 2018, the County Auditors’ Association requested that OAC 901:6-8-04(B) state that servicepersons submit a placed-in service form to both the Department and the local jurisdiction. The Department complied with this request.

On July 10, 2018, the County Auditors’ Association provided additional comments with regards to OAC 901:6-8-06. Paragraph (D) of the rule allows the owners or operators of devices may change light bulbs and receipt tape without utilizing the services of a registered service person. The Association requested that additional exemptions be permitted for “changing filters, general cleaning, and any maintenance that does not affect metrology in any way.” The Department reviewed these changes and determined that these actions, if not completed properly, could adversely affect the metrological accuracy of the device. Due to this potential impact, the Department concluded that a registered serviceperson must perform these activities. Further, these services can be routinely scheduled in a manner that would not impact the requesting individual’s business flow. The ability to change lightbulbs and receipt tape is an essential routine task for any business.

On July 11, 2018, Rossen Bradbury of Eagle Fabrication and Repair notified the Department of some clerical and grammatical issues that the Department has since resolved.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

As this rule is administrative in nature, no scientific data was used.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Department did not consider any alternative regulations as this rule is required by ORC 1327.501.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

As this rule is administrative in nature the Department did not consider a performance-based regulation.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Department is given the sole regulatory authority over servicepersons pursuant to ORC 1327.50.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Division of Weights and Measures communicates with the industry on a regular basis. The Division has already begun educating servicepersons and agencies of the new requirements and will continue to do so.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

All servicepersons operating in the state of Ohio. Service persons are individuals who install, service, repair, recondition, or place into service a commercially used weighing and measuring device for any type of compensation.

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b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);

Individuals must submit an application and seventy-five dollar biennial registration fee to the Department in order to be considered a complete application. Further, the rule requires all applicants to demonstrate their working knowledge of weighing and measuring devices for which the applicant intends to be registered. Applicants must pass an examination to demonstrate their skills and experience.

Each serviceperson must have their forms approved by the department to ensure that the required information is present. Further, servicepersons must submit their service report form within seven days after a device is services, restored to service, or placed into service.

Servicepersons to submit their standards and testing equipment to the Department or a NIST approved lab within a two-year period.

c. Quantify the expected adverse impact from the regulation.

The registration costs seventy-five dollars and is valid for two years. Applicants must take time to apply and draft proper recordkeeping forms. The Department has forms available for servicepersons to utilize. Finally, the Department conducts testing of standards and equipment at various rates depending on specific standard or equipment. These rates are available at the department's website.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As stated above, the registration of servicepersons is a statutory requirement. However, as stated previously the Department is tasked with protecting Ohio businesses and consumers by ensuring products are accurately measured and sold. This registration process ensures that the individuals installing and repairing weighing and measuring devices have the requisite knowledge and skill to do so accurately. These requirements help to ensure that Ohioans are receiving the exact amount of product purchased.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

As the primary purpose of these rules is ensuring the accuracy of weighing and measuring devices in conducting business, exemptions for a smaller operator would not be applicable.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Paperwork violations rarely reach the enforcement stage so long as the operator is willing to correct the violation and has no history of prior violations.

18. What resources are available to assist small businesses with compliance of the regulation?

The Department has online resources and has staff available to provide assistance. Training and seminars are also available.