

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Device Registration Permit

Rule Number(s): 901:6-4-01

Date: March 21, 2017

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded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.

Ohio Administrative Code (OAC) 901:6-4-01 outlines the application process for obtaining a permit to operate a commercially used weighing and measuring device in the state of Ohio. The rule is being amended to correct the number of days an applicant may submit his application late before the Department may issue a late fee. Currently, the rule states ninety days while the statute (ORC 1327.501) states sixty days. This revision ensures that the rule and the statute are aligned.

This rule is administered by the Ohio Department of Agriculture, Division of Weights and Measures (Department). The Department is tasked with protecting Ohio businesses and consumers by ensuring products are accurately measured, labeled, and sold. Further, the Department works with county and city weights and measures programs to test devices ranging from fuel meters and retail store scanners to vehicle and livestock scales for consistent measuring standards.

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

O.R.C. 1327.501

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 statutorily obligated to adopt rule outlining how a person can obtain a permit for a weighing and measuring device. As stated above, the Department is tasked with protecting Ohio businesses and consumers by ensuring products are accurately measured and sold. This registration process ensures that the Department is aware of the weighing and measuring devices used in commerce and subjects those devices to testing by the Department. Regular testing ensures that Ohioans are receiving the exact amount of product purchased.

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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 January 25, 2017, the proposed amended rule was sent to the following stakeholders, via email. Stakeholders were given until March 17, 2017 to email their comments to the Department:

Company Name

Advanced Composites
AK Steel
Amerigas
Amerigas
Anderson Propane Service
Austin Powder Co.
Baumann-Enterprises
Bay Metal Inc.
Berea Landscape Supply
Buckeye Scale
Cardinal Operating Co,
Central Ohio Recycling & Salvage LLC
Chemtrade Logistics
CIMCOOL
Circleville PPG Shipping
Diller Road Recycling
Emery Oleo
Erie County Landfill
Ferrell Gas
Ferrell Gas
Gateway Recycle
Germantown Oil
Hanson
Heiby Oil Co.
Henderson Oil Co.
Hook-N-Haul
Jacob Energy
Justin Moore
Kimble Company
KOST USA

Individual Name

Trey Fortner
Mike Brewer
Bradley Spearman
Aaron Noble
Michael Smith
David Ferri
Mike Baumann
Laura Alford
James Beverly
Tracie Russell
Joel M Milliken
Clay Korner
Rober Jakubowski
Frank Ujvary
Richard Molinski
Rob Rosen
Matthew DeMaison
Bryan Gill
Joe Krouse
Matt Drennen
Mike Hanhold
John Lesote
Tom Roudebush
Carol Ransbottom
Ken Henderson
Bryan Whittenberger
Phillip House
Justin Moore
Kathleen Raber
Jeff Litzinger

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Lafarge
Lincoln Moving & Storage
Lykins Energy
Madison Co. Airport
Matheson Gas
Matheson Gas
Military Support Services
Mississippi Lime Co.
Morton Salt
NASA Plum Brook
NGO Propane Co-Operative
Niagra Worldwide
Olen Corp.
Prism Propane
River Valley Paper Co.
Savage Services
Shaker Heights Public Works
Silverback Energy Services
Suburbane Propane
Summit Supply
Sunrise Co-Operative
SXCP Partners
Thrifty Propane
Timken Steel
Unique Paving Materials
Universal Steel
Universal Well Services
Valero Bloomingberg
Victory propane
Waste Management
Waste Management Cuyahoga Landfill
Wilbur Ellis
Willcrest Corp.
XL Sand & Gravel Co.
Zemba Bros.

Nikole Culp
Chuck Dietrich
Tom Berger
Jamie Kemper
Bill Troyer
Chuck Beecher
Jeff Boldman
Christine Mollison
Dana Roberto
Thomas Keating
Bob Herron
Steven Garner
Steve Hollis
Chris Hovest
Nick Miller
Richard Jesko
Shannon Marlin
Carl Beranek
David Leitch
Richard Hale
Laura Nold
Matt Clippinger
Stephanie Pennington
Mark Craig
Lynda Ajoury
Scott Szabo
Roy Irwin
Casey Pringle
Terence Brose
Lynn Churchvara
Evan Jahn
Jan Lee
Chris Perchinske
Kristen Kalis
Susan Zemba

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

The Department did not receive any comments from the above listed stakeholders.

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.

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- 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 1327.50.

- 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.

This rule outlines the process in which someone obtains a permit. ORC 1327.50 requires the Department to adopt such a rule.

- 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 these fuel devices pursuant to O.R.C. 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.**

These rules are already implemented within the industry and the Department works with all stakeholders in order to educate and inform them of the regulations.

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;**

Individuals who operate a commercially used weighing and measuring device. These devices include livestock scales, vehicle scales, railway scales, vehicle tank meters, bulk rack meter, and a liquefied propane gas meter.

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

Individuals must pay a license fee in order to permit their device. In addition, the application process will require minimal time for employer compliance. Failure to submit an application timely may result in the addition of a late fee.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

In accordance with ORC 1327.501, the permit fees for the weighing and measuring devices listed in paragraph (a) above are seventy-five dollars. Individuals who are more than 60 days late may be subject to a late fee of twenty dollars.

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

As stated above, the permitting of weighing and measuring devices is a statutory requirement. However, as the intent of this rule is to protect consumers and ensure accuracy in business dealings by establishing minimum standards for these businesses, the adverse impact is considered to be justified.

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.