



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Weights and Measures Ch 2, 3, 4, 5, 7, 8, and 9

Rule Number(s): 901:6-2-01, 901:6-3-01 to 6-3-12, 901:6-4-01, 901:6-5-01 to 6-5-02, 901:6-7-01 to 6-7-04, 901:6-8-01, 901:6-9-01

Date of Submission for CSI Review: 6/23/23

Public Comment Period End Date: 7/14/23

Rule Type/Number of Rules:

New/ 3 rules

No Change/ rules (FYR?)

Amended/ 5 rules (FYR? 5)

Rescinded/ 17 rules (FYR? 17)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**
Please include the key provisions of the regulation as well as any proposed amendments.

The Ohio Department of Agriculture, Division of Weights and Measures (hereinafter “Department”) is statutorily tasked with protecting Ohio businesses and consumers by ensuring products are accurately measured and sold. The rules have been reviewed and amended pursuant to Chapter 119 of the Ohio Revised Code (ORC). The rules and the proposed amendments are as follows:

Rule 901:6-2-01 this existing rule is proposed to be rescinded and replaced by a new version. 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. This rule outlines the application, definitions, and requirements of the National Type Evaluation Program. The amendments proposed add clarification and structure of the rule which will allow for easier reading comprehension. The amendments also update language to match current uniform rules published by the US Dept of Commerce, which are adopted in surrounding states. Businesses conducting interstate operations greatly benefit when rule language is uniform among the states.

Rule 901:6-3-01 sets forth the application of this chapter regarding labeling and packaging. This rule will be replaced with a new rule setting forth that Weights and Measures Chapter 3

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regarding labeling and packaging will incorporate by reference the “National Institute of Standards and Technology Handbook 130, Chapter IV Uniform Regulations, Section A Uniform Packaging and Labeling Regulation.” As currently formatted, this rule copies text from a previous version of the uniform rules handbook noted above. Replacement of this rule reduces the size of the Administrative Code and benefits businesses by adopting the same language that is used in surrounding states.

Rule 901:6-3-02 sets forth definitions as used in this chapter. This rule will be rescinded.

Rule 901:6-3-03 sets forth the declaration of identity regarding consumer packaging. This rule will be rescinded.

Rule 901:6-3-04 sets forth the declaration of identity regarding non-consumer packaging. This rule will be rescinded.

Rule 901:6-3-05 sets forth the declaration of responsibility regarding consumer and non-consumer packages. This rule will be rescinded.

Rule 901:6-3-06 sets forth the declaration of quantity regarding consumer packages. This rule will be rescinded.

Rule 901:6-3-07 sets forth the declaration of quantity. This rule will be rescinded.

Rule 901:6-3-08 sets forth the prominence and placement regarding consumer packages. This rule will be rescinded.

Rule 901:6-3-09 sets forth the prominence and placement regarding non-consumer packages. This rule will be rescinded.

Rule 901:6-3-10 sets forth the requirements regarding specific consumer commodities, packages, and containers. This rule will be rescinded.

Rule 901:6-3-11 sets forth exemptions for chapter 3. This rule will be rescinded.

Rule 901:6-3-12 sets forth the exemptions of variations to be allowed for chapter 3. This rule will be rescinded.

Rule 901:6-4-01 sets forth the requirements regarding device registration and permitting. This rule is being amended for clarification.

Rule 901:6-5-01 sets forth definitions for chapter 5. This rule is being amended for clarification.

Rule 901:6-5-02 sets forth regulations regarding retail sale of fuels. This rule is being amended for clarification and to align with current uniform language.

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Rule 901:6-7-01 sets forth the definitions for chapter 7. This rule will be replaced with a new rule setting forth that Weights and Measures Chapter 7 regarding method of sale will incorporate by reference the “National Institute of Standards and Technology Handbook 130, Chapter IV Uniform Regulations, Section B Uniform Regulation for Method of Sale of Commodities.” As currently formatted, this rule copies text from a previous version of the uniform rules handbook noted above. Replacement of this rule reduces the size of the Administrative Code and benefits businesses by adopting the same language that is used in surrounding states.

Rule 901:6-7-02 sets forth the regulations regarding food products. This rule will be rescinded.

Rule 901:6-7-03 sets forth the regulations regarding nonfood products. This rule will be rescinded.

Rule 901:6-7-04 sets forth general requirements. This rule will be rescinded.

Rule 901:6-8-01 sets forth regulations for voluntary registration of Ohio’s servicepersons and service agencies. This rule is being amended for clarification.

Rule 901:6-9-01 sets forth the minimum training requirements for weights and measures inspector personnel. This rule is being amended for clarification.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Revised Code 1327.50

4. **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, however a portion of the rules in this package reference Title 16 of the Code of Federal Regulations. These federal regulations are not required to be adopted by the Department; however, federal preemption may come into play. In addition, other portions of the rules in this package are modeled off of the National Institute of Standards Technology (NIST) Handbook 130 (2023). NIST is a non-regulatory federal agency within the U.S. Department of Commerce which publishes model uniform regulations. Adoption of these regulations promotes uniformity between states which benefits businesses conducting interstate operations. However, there is no specific requirement that the Department adopt these regulations.

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5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable

6. **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's Division of Weights and Measures is tasked with protecting Ohio businesses and consumers by ensuring products are accurately measured and sold. Verifying the accuracy of devices such as gas pumps, grocery store scales, and livestock scales ensures that businesses aren't giving away product and consumers are receiving the amount of product for which they pay. Ohio's gas pumps alone account for 102,000 meters selling 5 billion gallons of gas each year. Millions of dollars would be misallocated each year if these devices weren't regulated. The Department's additional functions include verifying that packages contain the correct amount of product and that packages are labeled correctly. This gives consumers the ability to value compare between like products. This economic impact is extremely significant. Approximately half of Ohio's gross domestic product is impacted by weights and measures' regulations.

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

The success of these updates will be measured by the reduction of inquiries from businesses and county inspectors seeking clarification of outdated language. Gray areas in rules will be significantly reduced by updating our language to match current uniform regulations adopted by other states. This not only benefits businesses through uniform interstate language, but also benefits Ohio consumers and local small businesses by improving uniform implementation among Ohio's 88 counties. When the language is clear, interpretation differences between counties are reduced to a minimum.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. **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.

Stakeholders were contacted by email on June 5, 2023.

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| First Name | Last Name | Affiliation |
|-------------|-------------|---|
| Tom | Pappas | County Auditor's Association |
| Russ | Vires | Mettler-Toledo Inc. |
| Virgil | Strickler | The Ohio Expo Center |
| Kurt | Leib | Capital Advocates |
| Stratt | Pinagel | Wal-Mart Corporation |
| Dan | Reinhart | Marathon Petroleum |
| Lou | Straub | Fairbanks Scales |
| Jennifer | Rhoads | OPMCA |
| Kristin | Mullins | Ohio Grocers |
| Tom | Fontana | Soybean Council |
| Rebecca | Richardson | MARC-IV Consulting |
| Leonard | Hubert | Hubert Associates |
| Mark | Holtgreven | Holtgreven Scale |
| George | Colvin | Ohio Ready-Mix Concrete |
| Jenn | Klein | OH Chemistry Technology Council |
| Andrew | Brechbuhler | Brechbuhler Scales |
| David | Biro Sr. | Brio Scales |
| John | Spencer | Mulch Manufacturing |
| John | Spirtoff | Bob's Meter Testing |
| Bob | Esber | Ashland Scale |
| Lt. William | Menendez | OH State Patrol |
| David | Calix | NCR Corporation |
| Steve | Smith | Buckeye Scale |
| Katrice | Lippa | National Insititute of Standards & Technology |
| Eric | Golden | Cardinal Scales |
| Kristy | Moore | KMoore Consulting LLC |
| Ron | Milburn | AFPD |
| Robert | LaGasse | Mulch & Soil Council |
| Randy | Moses | Wayne Fueling Systems |
| Lora | Miller | Ohio Council Retail Merchants |
| Richard | Suiter | Richard Suiter Consulting |
| Jody | Licursi | Capitol Strategies group LLC |
| Holly | Nagle | Ohio Council of Retail Merchants & Affiliates |
| Timothy | Columbus | Steptoe & Johnson LLP |
| Derek | Dalling | Ohio Propane Association |
| Steven | Trueman | Brechbuhler Scales |
| John | Pfister | Kanawha Scales & Systems |
| John | Steele | Kanawha Scales & Systems |

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

The stakeholders were notified of the proposed changes and one comment was received from B Tek Scales which conveyed that they have no concerns with the changes.

11. 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?

These rule updates are based on standards from The National Conference on Weights and Measures (NCWM) and The National Institute of Standards and Technology (NIST) wherever applicable. NCWM brings together state regulators, manufacturers, and industry stakeholders to discuss current marketplace issues related to weights and measures. Statistical analysis and business impact is included in the discussions for any proposed updates to regulations. Once the NCWM body approves updates, the updates are forwarded to the NIST for publication in uniform regulations handbooks. NIST handbooks are updated and published annually. The intent of this process is to provide clear and concise uniform regulations which are adopted by the states and implemented uniformly throughout the United States.

12. 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?

Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

Not applicable, as these rule amendments are based on uniform regulations for the United States' commercial marketplace. There are no applicable alternative regulations. Maintaining consistent weights and measures regulations between states ensures fair competition among businesses, and boosts consumer confidence by providing the ability to easily value compare between different products. A fair playing field for businesses, combined with high consumer confidence, results in the strongest commercial marketplace economy possible.

13. 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 devices through O.R.C. 1327.50.

14. 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.

State, city, and county weights and measures inspectors will be provided training on the updates to ensure consistent application. The regulated community will see no change from current regulations, other than more consistent and uniform application by inspectors. These rule amendments will greatly improve the application by state, county, and city inspectors by providing much clearer language that is geared towards current marketplace trends and technologies. When rule language is outdated, it is difficult to interpret and apply uniformly.

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Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The scope of the impacted business community will not change with these rule updates. The rules will continue to apply to state, city, and county weights and measures inspectors, to owners of commercial scales and meters, to service persons who service commercial scales and meters, to retail establishments who offer items for sale, and to manufacturers who package and label products for retail sale.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

The amendments to these rules do not negatively impact the business community in any substantial way. These amendments will positively impact the business community by improving the uniform application among Ohio counties and surrounding states.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*)

Yes, proposed changes include simplifying rules to improve readability, removing certain reporting requirements for service persons, removing limitations placed on service persons regarding certain minimum equipment requirements as well as where their equipment can be calibrated, and removing certain fees applied to businesses as part of the device permitting program,

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

The regulatory intent of these rules is to protect the public and ensure accuracy in business dealings by promoting healthy, fair competition for these business communities. The proposed amendments do not impose any new adverse impacts to businesses. Rather, the impacts will be positive through more uniform application of clear, easily comprehensible rules.

Regulatory Flexibility

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

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As the primary purpose of these rules is ensuring uniform application to protect all businesses, exemptions for a smaller operator would not be applicable. Smaller businesses benefit from these rules by providing a level playing field for competition with larger businesses.

19. 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. First-time offenders are given 14 days to correct a problem, and should the issue not be resolved they are routinely offered settlements that are appropriate to the circumstances of the violation, and in almost all cases have their fines waived or settled for small fines.

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

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