



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### 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):

W&M 5-Year Rule Review

Rule Number(s): 901:6-8-01 and 901:6-9-01

Date of Submission for CSI Review: June 23, 2021

Public Comment Period End Date: July 16, 2021

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 2 rules (FYR? 2)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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.*

Rule 901:6-8-01 established the registration and examination process to become registered. This rule is being amended to conform to LSC stylistic standards along with areas of removed unnecessary text.

Rule 901:6-9-01 sets forth the minimum training requirements for weights and measures inspector personnel. This rule is being amended to add clarification to the lesson plan names and to conform to LSC stylistic standards.

- 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.***

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No.

- 5. If the regulation 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)?**

Through the registration required in rule 901:6-8-01, the Department has ensured that the successful applicants have demonstrated the experience and education necessary to install, service, repair, or recondition commercial weighing devices. Through the education provided for in 901:6-9-01, the Department promotes uniformity in Ohio weights and measures laws, regulations, and standards to achieve equity between buyers and sellers in the marketplace.

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

The Department will measure success in the number of registered servicepersons and service agencies, or inspector personnel trained and a reduced number of violations.

- 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.*

The following stakeholders were contacted via email on April 28, 2021:

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

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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. – Biro Scales  
John Spencer – Mulch Manufacturing  
John Spiritoff – Bob’s Meter Testing  
Bob Esber – Ashland Scale  
Lt. William Menendez – OH State Patrol  
David Calix – NCR Corporation  
Steve Smith – Buckeye Scale  
Eric Golden – Cardinal Scales  
Kristy Moore – Kmoore Consulting LLC  
Ron Milburn – AFPD  
Robert LaGasse – Mulch and Soil Council  
Randy Moses – Wayne Fueling Systems  
Lora Miller – Ohio Council Retail Merchants  
Richard Suiter – Richard Suiter Consulting  
Jody Licursi – Capitol Strategies Group LLC  
Timothy Columbus – Steptoe & Johnson LLP  
Derek Dalling – Ohio Propane Association  
Steven Trueman – Brechbuhler Scales  
John Pfister – 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?**

Multiple stakeholders requested the further clarification on the lesson plan names listed in rule 901:6-9-01 of the Administrative Code. The Department added further clarification to the listed lesson plan names.

**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?**

Rule 901:6-8-01 was developed previously using a history of scientific data from the National Institute of Standards and Technology (NIST). For rule 901:6-9-01, this question is not applicable.

**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?**

Stakeholder participation in this rule package has indicated to the Department that this is the best regulatory scheme at this time. Previously, the Department has evaluated the serviceperson regulations found in Handbook 130, but has determined the regulations are too broad whereas the current Ohio regulations are more tailored to the industry in Ohio. For this reason, no other regulatory alternatives were considered.

**13. 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.***

Rule 901:6-8-01 outlines the administrative process in which an individual becomes registered as a serviceperson or service agency. This rule outlines the process of how to achieve this registration therefore, the Department did not consider a performance-based regulation. Rule 901:6-9-01 is a performance-based regulation. This rule sets forth the initial courses required for training. However, once completed, the Department does not dictate the continuing education course required by the inspector personnel and rather gives them flexibility to decide which courses they need education.

**14. 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 through Revised Code 1327.50.

**15. 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.**

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These rules are already implemented within the industry. Additional education and outreach will be performed with the affected communities of the changes made by the Department.

### **Adverse Impact to Business**

#### **16. 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; and**

Rule 901:6-8-01 impacts all current and prospective servicepersons and service agencies. Service persons and service agencies are generally any person, entity, or firm who installs, services, repairs, or reconditions, for hire, award, commission, or any other payment of kind, a commercial weighing or measuring device.

Rule 901:6-9-01 impacts all weights and measures inspector personnel.

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

Registration of service agencies is voluntary. Applicants interested in becoming a registered serviceperson must submit an application to the Department. Additionally, the applicants must have possession of the standards and testing equipment necessary to perform the services in which they are requesting registration. Applicants must pass a qualifying examination for each type of weighing and measuring device they wish to register for.

All weights and measures inspector personnel must participate in an initial training program within thirty days of their appointment. This training program consists of twenty individual lessons which gives inspector personnel the necessary education and tolls to complete their job. After the initial training, all weights and measures inspector personnel must complete eight hours of continuing education.

##### **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.*

Registration of service agencies is voluntary. Applicants interested in becoming a registered serviceperson must submit an application to the Department which requires minimal time for compliance. The cost of the standards and testing equipment necessary to perform the services in which they are requesting registration varies upon the equipment and the intentions of the applicant. Applicants must pay a \$25 non-refundable examination fee and, if successful, the applicant must pay a \$75 registration fee on a biennial basis.

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For weights and measures inspector personnel, there is no cost to attend either the initial training courses or the continuing education courses provided by the Department. There is a cost in terms of hours to comply as well as any travel that is necessary to attend the programs.

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

For rule 901:6-8-01, the Department is statutorily tasked with providing a registration of private weighing and measuring device servicing agencies, and personnel registering under Revised Code 1327.50. Through this registration, the Department has ensured that the successful applicants have demonstrated the experience and education necessary to install, service, repair, or recondition commercial weighing devices. For rule 901:6-9-01, the Department is statutorily tasked with training all weights and measures inspector personnel under Revised Code 1327.50. There is no cost to the weights and measures inspector personnel other than time and travel.

These regulations promote equity between buyers and sellers in the marketplace by promoting uniformity in Ohio weights and measures laws, regulations, and standards, enhances consumer confidence, and enables Ohio businesses to compete fairly.

**Regulatory Flexibility**

**18. 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 weights and measures devices in conducting business, exemptions would not be applicable.

**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?**

The Department works with all servicepersons and service agencies and weights and measures inspector personnel to ensure that they obtain necessary training.

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

The Department has online resources and has field staff available to provide assistance.