

# **COLORADO DEPARTMENT OF AGRICULTURE**

## **Inspection and Consumer Services Division**

### **Measurement Standards**

#### **8 CCR 1202-2**

#### **Part 1. Qualifications for Certified Weigher Certificate**

##### **1.1. Training**

Must have completed training by a competent scale operator on procedures for operating scales.

##### **1.2. Written Exam**

Applicants must pass a written exam furnished by the Commissioner and each applicant must score 75% or better on the exam to be considered for certification.

#### **Part 2 Certification of Commercial Weighing and Measuring Device Service Providers**

##### **2.1. Requirements for Certification**

Applicants must score 90% or better on a written exam furnished by the Commissioner in order to be considered for certification.

##### **2.2. Certificate Categories**

- 2.2.1 One service person;
- 2.2.2 Two to five service persons;
- 2.2.3 Six to ten service persons;
- 2.2.4 More than ten service persons.

#### **Part 3. Placing In Service Requirements**

- 3.1. Commercial weighing and measuring device service providers shall submit a placing in service report to the Commissioner within 10 calendar days after the placing in service date.
- 3.2. A commercial weighing and measuring device service provider must own the standards used to place a commercial device into commercial service unless:
  - 3.2.1. The Commissioner is informed in advance that the commercial weighing and measuring device service provider will use standards other than its own to repair, service or place in service a commercial weighing and measuring device and, if such standards were approved by another NIST recognized state metrology laboratory, provide the

commissioner with copies of that owner's current approval certificates for those standards and;

- 3.2.2. The owner of the standards provides the Commissioner with written consent allowing the use of the standards by the commercial weighing and measuring device service provider and specifying the time period during which such use is authorized.
- 3.3. For scales with a capacity greater than 2,000 lb., a copy of the scale test report shall accompany the placing in service report. The scale test report shall include the values of all applied test weights and indicated weights used to place the device into service.
- 3.4. No person may place in service a commercial weighing or measuring device unless that device complies with §35-14-105 C.R.S.
- 3.5. Device service providers who repair, service or place in service a commercial weighing and measuring device shall submit to the Commissioner a placing in service report that contains the following information:
  - 3.5.1. The date the device(s) were placed into service;
  - 3.5.2. The owner or user of the device(s);
  - 3.5.3. The physical address, city and zip code of where the device(s) is located, and the location of or directions to the device(s) if the device(s) is not located at the actual physical address listed on the in service report;
  - 3.5.4. The phone number of the owner or user of the device(s);
  - 3.5.5. The location of or directions to the device(s) if the physical address of the device is not wholly informative;
  - 3.5.6. The device(s) type;
  - 3.5.7. The device(s) capacity;
  - 3.5.8. The device(s) manufacturer;
  - 3.5.9. The device(s) model number;
  - 3.5.10. The device(s) serial number;
  - 3.5.11. The device(s) scale division, or unit of measure of device(s) if not a scale;
  - 3.5.12. The device(s) national type evaluation certificate of conformance number;
  - 3.5.13. The accuracy class of the device(s);
  - 3.5.14. A description of the work performed on the device(s) including whether a new device(s) was installed, a rejected/previously existing device(s) was replaced with a new device(s), or if a device(s) was repaired, and what repairs were made;

- 3.5.15. The printed name of the service person who placed the device(s) into service or use;
- 3.5.16. The device service provider business name;
- 3.5.17. The device service provider certificate number.

**Part 4. Scales Used for Commercial Purposes**

- 4.1. Any scale used to determine a monetary charge where the weight is a consideration in determining the sale price is a commercial weighing and measuring device.
- 4.2. Scales used for commercial purposes to buy or sell commodities that have a total weight of 3 ounces or less shall be class II, National Type Evaluation Program compliant and have a scale division of not greater than 0.01 gram.

**Part 5. Tolerance Criteria for Rejected Devices**

- 5.1. Work orders or condemned device tags shall be issued for devices for which the owner is required to be licensed in the following circumstances:
  - 5.1.1. For devices with a capacity up to and including 2,000 lbs.:
    - 5.1.1.1. If the allowable tolerance is specified in terms of divisions, a blue work order tag shall be placed on a scale that exceeds the allowable tolerance by up to and including three divisions.
    - 5.1.1.2. If the allowable tolerance is specified in terms of divisions, a red condemned device tag shall be placed on a scale that exceeds the allowable tolerance by more than three divisions.
  - 5.1.2. For devices with a capacity greater than 2,000 lbs.:
    - 5.1.2.1. If the allowable tolerance is specified in terms of divisions, a blue work order tag shall be placed on a scale that exceeds the allowable tolerance by up to and including three times the allowed divisions.
    - 5.1.2.2. If the allowable tolerance is specified in terms of divisions, a red condemned device tag shall be placed on a scale that exceeds the allowable tolerance by more than three times the allowed divisions.

**Part 6. License and Certificate Expiration Dates**

- 6.1. The expiration date for a license to operate a commercial weighing and measuring device shall be December 31.
- 6.2. The expiration date for a certified weigher certificate shall be December 31.
- 6.3. The expiration date for a commercial weighing and measuring device service provider certificate shall be December 31.

**Parts 7 – 8. Reserved**

This copy of the text of the rules and regulations for "Measurement Standards" is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1202-2 and may be obtained from the following website:  
<http://www.sos.state.co.us/CCR/Welcome.do>.

## **Part 9. Statements of Basis, Specific Statutory Authority and Purpose**

*The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1978 to 1986 are no longer in the Department's files.*

### **1. Emergency Rule Adopted July 1, 2009 – Effective July 1, 2009**

#### **STATUTORY AUTHORITY:**

The Commissioner's authority for the adoption of these Emergency Rule Amendments is set forth in §§ 35-14-107(1)(o), 121(3), C.R.S. (2008), § 35-1-107(5)(a), C.R.S. (2008), § 24-4-103(6) C.R.S., (2008), and §§ 35-14-121(5), 123(1), 123(2)(a), 123(2)(b), and 127(1), C.R.S., as enacted in SB 09-113.

#### **PURPOSE:**

The purpose of these Emergency Rule Amendments is to update the rules pertaining to the Measurement Standards Act of 1983 to comply with the amendments to the Act set forth in SB 09-113.

#### **These Amendments:**

- a. Establish the license expiration date for operation of commercial weighing and measuring devices.
- b. Establish the certified weigher certificate expiration date for those individuals who obtain a certificate on or after July 1, 2009.
- c. Establish the certificate expiration date for commercial weighing and measuring device service providers who obtain a certificate on or after July 1, 2009.
- d. Establish commercial weighing and measuring device service provider certification categories and performance requirements.
- e. Amend commercial weighing and measuring device service provider certification requirements to clarify the requirements are for the company, not the individual service person employed by the company.
- f. Add a section to contain the statements of basis, specific statutory authority and purpose.

#### **FACTUAL AND POLICY BASIS:**

The factual and policy issues that require the immediate adoption of these Emergency Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Measurement Standards Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-113, effective July 1, 2009, that:
  - a. Remove statutory expiration dates for device licenses, certified weigher and device service providers and requires the Commissioner to establish such dates in rule.

- b. Require the Commissioner to establish commercial weighing and measuring device service provider certification categories and performance requirements.
2. The existing rule sets forth certification requirements for individuals, but the statute requires the business to obtain the certificate. The amendment clarifies that the requirements for certification of service providers is for the company, not an individual.
  3. The Commissioner hereby finds that immediate adoption of these Emergency Rule Amendments is imperatively necessary to comply with the revisions to the Colorado Measurement Standards Act of 1983, §§ 35-14-101 – 134, C.R.S., enacted by the General Assembly in its 2009 legislative session, which take effect on July 1, 2009. These Emergency Rule Amendments are required to permit the continuous and uninterrupted administration and enforcement of the Act, including the issuance of licenses and certificates thereunder.

**2. ADOPTED JULY 16, 2009 – EFFECTIVE AUGUST 30, 2009**

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rule Amendments is set forth in §§ 35-14-107(1)(o), 121(3), C.R.S. (2008), § 35-1-107(5)(a), C.R.S. (2008), and §§ 35-14-121(5), 123(1), 123(2)(a), 123(2)(b), and 127(1), C.R.S., as enacted in SB 09-113.

PURPOSE:

The purpose of these Permanent Rule Amendments is to update the rules pertaining to the Measurement Standards Act of 1983 to comply with the amendments to the Act set forth in SB 09-113.

These Permanent Rule Amendments:

- a. Establish the license expiration date for operation of commercial weighing and measuring devices.
- b. Establish the certified weigher certificate expiration date for those individuals who obtain a certificate on or after July 1, 2009.
- c. Establish the certificate expiration date for commercial weighing and measuring device service providers who obtain a certificate on or after July 1, 2009.
- d. Establish commercial weighing and measuring device service provider certification categories and performance requirements.
- e. Amend commercial weighing and measuring device service provider certification requirements to clarify the requirements are for the company, not the individual service person employed by the company.
- f. Add a section to contain the statements of basis, specific statutory authority and purpose.
- g. Correct typographical errors throughout the rule.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Measurement Standards Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-113, effective July 1, 2009, that:
  - a. Remove statutory expiration dates for device licenses, certified weigher and device service providers and requires the Commissioner to establish such dates in rule.
  - b. Require the Commissioner to establish commercial weighing and measuring device service provider certification categories and performance requirements.
2. The existing rule sets forth certification requirements for individuals, but the statute requires the business to obtain the certificate. The amendment clarifies that the requirements for certification of service providers is for the company, not an individual.
3. The Commissioner intends to adopt Emergency Amendments to the Rules on July 1, 2009 in order to implement the changes to the Act made by the General Assembly in SB 09-113. These Permanent Amendments will make permanent those Emergency Amendments.

**3. Adopted April 9, 2013 – Effective January 1, 2014**

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rule Amendments is set forth in § 35-14-107(1)(o) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of this Permanent Rule Amendment is to amend Regulation 8 1.1 to change the license expiration date for operation of commercial weighing and measuring devices from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rule Amendments are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

**4. Adopted June 11, 2014 – Effective July 30, 2014**

STATUTORY AUTHORITY:

The Commissioner of Agriculture, is authorized to adopt these permanent rules pursuant to §§ 35-14-107 (1)(o), 35-14-123 (2)(b), 35-14-123 (7), and 35-14-124 (5), C.R.S.

#### PURPOSE:

The specific purposes of these rule changes are as follows:

1. Reformat the rule by changing the term “regulation” to “part” so as to be consistent with other Colorado Department of Agriculture rules.
2. Delete the civil penalty regulation, which will now be set via policy. Existing rule is too stringent and does not allow for consideration of aggravating/mitigating circumstances when a civil penalty is issued.
3. Amend Part 1.1. by removing the apprentice training requirement, which is no longer applicable. Training can be completed by a scale operator.
4. Amend Part 1.2. by removing the unnecessary requirement of an interview to become a certified weigher and add language to clarify that applicants must pass a written exam.
5. Amend Part 2.1. by removing the onerous and difficult to obtain training and experience requirement to become a device service provider. Language in its place has been added that requires applicants pass a written exam in order to become certified.
6. Add language to Part 3 to meet the statutory requirement to create performance requirements for device service providers, including language added to clarify time frame for in-service report submission, require ownership of standards, provide for use of standards not owned by the service provider, require a scale test report for large capacity devices, and specify the information required on a placing in-service report.
7. Add language to Part 4 that clarifies the statutory definition of a commercial weighing and measuring device. Also add language that specifies the scale type to be used for commercial transactions involving total weights of 3 ounces or less.
8. Add language to Part 5 to meet the statutory requirement that mandates rules clarifying the circumstances under which a blue or red tag should be issued for a rejected device.
9. Delete the requirement of what information is needed on a license application, which will now be set in policy.
10. Delete requirements in regard to scale pit depth, and approaches to vehicle scales which are no longer in line with the national model law. The less restrictive requirements set forth in the model law, NIST Handbook 44, will now be used.

#### FACTUAL AND POLICY ISSUES:

1. During 2008-09 the Department of Regulatory Agencies (DORA) performed a Sunset Review of the Colorado Measurement Standards Act (MSA). The outcome of this process was the amendment of the MSA whereby language was added that required CDA to promulgate rules that specify performance requirements for device service providers, information required on a placing in-service report and criteria under which a blue or red tag will be issued to a rejected device. Thus in order for the Department of Agriculture to comply with these statutory requirements, the

proposed rules in 8 CCR 1202-2 have been created. These rules have been drafted with the assistance from representatives of the industry that would be affected by their adoption.

2. Rules that the Department no longer believe to be necessary, or not in accordance with the national model law have been removed.
3. These revisions incorporate changes as a result of the Department's Regulatory Efficiency Review Process conducted in accordance with the Governor's Executive Order D 2012-002.