



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

**2017 Sunset Review:  
Measurement Standards Act of 1983**

*October 13, 2017*



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 13, 2017

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Colorado Department of Agriculture's the Division of Inspection and Consumer Services' implementation of the Measurement Standards Act of 1983. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2018 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 14 of Title 35, C.R.S. The report also discusses the effectiveness of the Commissioner of Agriculture and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Marguerite Salazar  
Executive Director





# COLORADO

## Department of Regulatory Agencies

Colorado Office of Policy, Research &  
Regulatory Reform

### 2017 Sunset Review Measurement Standards Act of 1983

#### SUMMARY

##### ***What is regulated?***

The Commissioner of Agriculture through the Division of Inspection and Consumer Services (Division) issues licenses to commercial scale operations, certifies weighers and the people who service scales, and performs inspections to ensure that commercial weighing and measuring devices are accurate within the appropriate tolerances.

##### ***Why is it regulated?***

Without standardization, measurements cannot be compared accurately. Without a system to accurately measure commodities, it is impossible to determine the worth of many commodities.

##### ***Who is regulated?***

In fiscal year 15-16, the Division issued 8,164 licenses or certifications to weighing or measuring devices, 802 certifications to weighers, and 63 certifications to device service providers.

##### ***How is it regulated?***

The Division implements the Measurement Standards Act of 1983 (Act) in multiple ways:

- Small scale and retail market inspection,
- Large scale inspection and weigher certification,
- Moisture tester and protein analyzer inspection,
- Metrology laboratory verification, and
- Device service provider certification.

The Division performed 1,988 inspections during fiscal year 15-16.

##### ***What does it cost?***

In fiscal year 15-16, the Division expended \$1,421,000 and employed 18.7 full-time equivalent employees administering the Act.

##### ***What disciplinary activity is there?***

The Division issued 33 fines totaling \$3,300 during fiscal year 15-16. The fines were largely issued for a failed price verification test or failed package test.

## KEY RECOMMENDATIONS

### ***Continue the Act for 15 years, until 2033.***

Having standardized measurements for consumer goods, or any commercial transaction is as important as having a standardized currency. It is a principal way to determine the worth of many articles, substances, and/or goods available for purchase in the marketplace. Given the high stakes of inaccurate measuring devices in the marketplace, it is necessary for the state to verify the accuracy of the devices to protect the health, safety, and welfare of the public.

## METHODOLOGY

In conjunction with this review, the Colorado Office of Policy, Research and Regulatory Reform staff interviewed Division staff, officials with the National Institute of Standards and Technology (NIST), retailers, and public scale operators; observed inspections of large scales, small scales, scanners, and protein and moisture analyzers; and reviewed the Act and the NIST *Handbook 44*.

## MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Association of Chiefs of Police  
Colorado Cattleman's Association  
Colorado Department of Agriculture  
Colorado Retail Council  
Denver Department of Public Safety  
National Institute of Standards and Technology

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
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Colorado Office of Policy, Research and Regulatory Reform  
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# Background

## Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

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## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.



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## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr).

Many of the licensing and inspection functions of the Colorado Department of Agriculture as enumerated in Article 14 of Title 35, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2018, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to standardize the measurement of commercial goods should be continued and to evaluate the performance of the Colorado Department of Agriculture's Division of Inspections and Consumer Services (Division). During this review, the Division must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

In conjunction with this review, COPRRR staff interviewed Division staff, officials with the National Institute of Standards and Technology (NIST), retailers, and public scale operators; observed inspections of large scales, small scales, scanners, and protein and moisture analyzers; and reviewed the Measurement Standards Act of 1983 (Act) and the NIST *Handbook 44*.

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## Profile

A considerable portion of Colorado commerce occurs under the auspices of the Act. The program developed to implement the Act enforces standards which allow consumers to compare goods by weight and price.

Packaged commodities are routinely inspected in retail and wholesale establishments to ensure that they are labeled properly and that the package accurately contains the quantity as labeled.<sup>2</sup>

Price verification tests are performed in stores. Inspectors test scanner pricing accuracy at retail locations by verifying posted prices, shelf tags, and advertisements at checkout.<sup>3</sup>

Specifications and tolerances for the devices, as well as general and user requirements, are included in the NIST publication, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices; Handbook 44*. NIST is a federal agency which determines standards employed nationwide and enforced under the Act.

The majority of the program's inspections are conducted on commercial weighing devices, or scales. The spectrum ranges from highly sensitive scales in marijuana dispensaries to less sensitive devices that weigh hundreds or thousands of pounds of bulk goods.

Large scales are devices that are:

- Scales with capacities of 1,001 pounds and greater;
- Belt conveyor scales; and
- In-motion railroad track scales.

All other scales are small scales.

Commercially used scales and meters must be legal for trade. A device that is legal for trade must generally have a Certificate of Conformance issued by the National Type Evaluation Program.<sup>4</sup>

The Division also verifies the accuracy of moisture testing devices and protein meters.

A moisture testing device checks the amount of moisture in grain that is to be stored in a grain elevator. Generally, to keep stored product from spoiling in an elevator the moisture content must be below 13 percent. If the moisture content is higher, then the grain must be dried prior to putting it into the grain elevator. Moreover, if the grain is wet, the price per pound decreases. The price is based on the fact that once the grain dries, it will weigh less per bushel. The extra processes and extra weight mean extra costs to the producer, so the accuracy of a device is important.

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<sup>2</sup> Colorado Department of Agriculture. *Packaging and Labeling Inspection*. Retrieved May 22, 2017, from <https://www.colorado.gov/pacific/aginspection/packaging-and-labeling-inspection>

<sup>3</sup> Colorado Department of Agriculture. *Price Verification*. Retrieved May 22, 2017, from <https://www.colorado.gov/pacific/aginspection/price-verification>

<sup>4</sup> Colorado Department of Agriculture. *Commercial Devices*. Retrieved May 22, 2017, from <https://www.colorado.gov/pacific/aginspection/commercial-devices>

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Similarly, protein meters measure the protein content in certain grains. The amount of protein is important to the user of the grain. For example, a brewer needs to have a certain protein content in its barley in order to brew beer and bakers need certain levels of protein in wheat to complete a recipe. Again, accuracy is important because it may have economic consequences.

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# Legal Framework

## History of Regulation

Colorado first began regulating weights and measures in 1953. The first standards conformed to the National Bureau of Standards (NBS) guidelines. Approximately 30 years later the General Assembly adopted the Measurement Standards Act of 1983 (Act) which also followed the NBS guidelines. In 1988, Congress replaced the NBS with the National Institute of Standards and Technology (NIST). NIST determines the current standards.

In 1994 and in 2008, the Act underwent sunset reviews. The program was continued on both occasions with only one major change. The 1994 sunset review recommended and the General Assembly concurred, to give the Commissioner of Agriculture (Commissioner) the authority to revoke, refuse to renew, suspend, or restrict the certification of certified public weighers. The 2008 sunset review recommended updates in program execution.

## Legal Summary

The Act is Article 14, of Title 35, Colorado Revised Statutes (C.R.S.). The purpose of the Act is to systemize quantity assessment so consumers can comprehend values. The Act defines “weights or measures” as:

all weights or measures of every kind, any instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all of such instruments and devices.<sup>5</sup>

The Act defines “standard” as, “a weight or measure used as a reference to establish a measured quantity value.”<sup>6</sup>

The Act empowers the Commissioner, and his or her designees, to administer and enforce the Act.<sup>7</sup> Among other responsibilities, the Commissioner is directed to:<sup>8</sup>

- Maintain traceability of state standards to the standards of NIST;
- Establish requirements for labeling, the presentation of cost-per-unit information, standards of weight, measure, or count, and standards of fill for any packaged commodity;
- Grant exemptions to the Act if the Commissioner considers that an exemption would serve the public interest;
- Conduct compliance investigations;
- Test the standards of weights and measures used by any city or county;
  - The tuning forks to calibrate radar guns are exempt from this provision.

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<sup>5</sup> § 35-14-102(34), C.R.S.

<sup>6</sup> § 35-14-102(30.5), C.R.S.

<sup>7</sup> § 35-14-106, C.R.S.

<sup>8</sup> § 35-14-107, C.R.S.

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- Inspect and test weights and measures on items for sale, including those that are prepackaged;
  - Inspect and test all commercial weighing and measuring devices for which the owner is required to be licensed;
  - Approve for use weights and measures found to be correct and reject weights and measures that are found to be incorrect;
  - Prescribe the appropriate term or unit, or weight or measure, when the existing practice does not facilitate an accurate value comparison;
  - Allow for reasonable variations from the stated contents in interstate commerce commodities;
  - Promulgate rules necessary for Act implementation;
  - Negotiate and enter into agreements with local jurisdictions to implement and enforce the Act; and
  - Inspect and test any weight, measure, or standard used by a governmental entity, after a request has been made.

In addition to these directives the Commissioner is granted some special police powers. He or she may stop any commercial vehicle and require documents concerning the contents of the vehicle, inspect the contents of the vehicle at the site, or, if necessary, require the vehicle to proceed to a location for inspection.<sup>9</sup> The Commissioner may also issue a stop-use, hold, or removal order, or seize without a formal warrant, any incorrect or unapproved weight, measure, package, or commodity that is for sale.<sup>10</sup> If the owner of a building or vehicle refuses to allow an inspection, the Commissioner may obtain a warrant from the relevant county or district court to inspect it.<sup>11</sup>

If the Commissioner holds a hearing under the provisions of the Act, he or she has the ability to administer oaths, take statements, and issue subpoenas requiring the attendance of witnesses and documents relative to the investigation. If a witness fails to obey a subpoena, the Commissioner may petition the district court to compel compliance or be in contempt of court.<sup>12</sup>

The Act is very prescriptive. The majority of its sections enumerate expected standards and conducts to be used in many types of settings. Among those it addresses:

- Misrepresentation of quantity - Section 110;
- Misrepresentation of price - Section 111;
- Method of sale-general - Section 112;
- Machine vended commodities - Section 115;
- Railroad car tare weights - Section 116;
- Unit pricing - Section 117;
- Declarations on packages - Section 118;
- Misleading packages - Section 119; and
- Declaration of unit price on random-weight packages - Section 120.

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<sup>9</sup> § 35-14-108(1)(d), C.R.S.

<sup>10</sup> §§ 35-14-108(1)(b) and (1)(c), C.R.S.

<sup>11</sup> § 35-14-108(3), C.R.S.

<sup>12</sup> § 35-14-108(2), C.R.S.

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Prior to operating any nonexempt scale, textile meter, or cordage meter for commercial purposes, the owner must obtain a license for the device.<sup>13</sup> The Commissioner is required to test each scale, textile meter, or cordage meter once each year as needed. If the device is accurate, a sticker must be attached signifying its approval.<sup>14</sup>

The Commissioner offers an optional certification to weighers. Weights and measures inspectors, persons who weigh items that the weigher or the weigher's employer are buying or selling, and persons weighing items for warehouses or processors in conformance with federal requirements, are eligible for certification.<sup>15</sup> Good moral character, the ability to weigh accurately, and the ability to make correct weight certificates are prerequisites for becoming a certified weigher.<sup>16</sup> The Commissioner may issue a limited certification to certain government-qualified individuals. However, those individuals may only act as certified weighers within the scope of their qualified duties.

The Act directs that official public certified scales meet certain specifications and be operated only by a certified weigher. Each scale must have the maximum weighing capacity of the scale posted on the scale house. It is a violation of the Act to weigh any commodity suspected to weigh more than the rated capacity of the scale.<sup>17</sup> Certified scales are required to be available for use every day except Sundays and legal holidays.<sup>18</sup>

A certified weigher must weigh any load delivered to the scales and issue a certificate of correct weight. The certified weigher is required to keep a daily register with every transaction recorded in it. The register must be kept for two years and be available for inspection at all times.<sup>19</sup>

Commodities bought, sold, delivered, or in the process of changing ownership that use the content's weight to determine payment must be weighed on a scale licensed in accordance with the Act. If the buyer or seller owns his or her own licensed scale and uses it to determine the weight, that person must issue an invoice to the other party.<sup>20</sup> When a weighing or measuring device is in a commercial establishment, it is *prima facie* evidence that it is being used. If the owner of the device does not have a license for its use, the device must have a "no license fee paid" or "not approved for commercial use" tag attached to it.<sup>21</sup>

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<sup>13</sup> § 35-14-127(1), C.R.S.

<sup>14</sup> § 35-14-127(3), C.R.S.

<sup>15</sup> § 35-14-121(6), C.R.S.

<sup>16</sup> § 35-14-121(1), C.R.S.

<sup>17</sup> § 35-14-122(1), C.R.S.

<sup>18</sup> § 35-14-122(4), C.R.S.

<sup>19</sup> § 35-14-122(2), C.R.S.

<sup>20</sup> § 35-14-122(6)(a), C.R.S.

<sup>21</sup> § 35-14-124(3)(b), C.R.S.

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If an inspection determines that a commercial weighing or measuring device is not accurate, there are multiple options available to the Commissioner. A blue tag indicating “Work Order” is to be placed on a commercial device that is marginally out of tolerance or in need of minor repairs. Those repairs must be made within 30 days unless extended by the Commissioner.<sup>22</sup> A red tag indicating “Condemned” must be placed on a device that is significantly out of tolerance and cannot be used for any commercial purpose.<sup>23</sup>

If a person is out of compliance with the Act, the Commissioner may issue a warning, may institute a time period to correct a violation, or may issue a stop sale order for any products that do not meet requirements.<sup>24</sup>

Only owners or certified service providers may repair, service, or place in service any approved commercial weighing or measuring device.<sup>25</sup> A certified service provider must submit a placing-in-service report to the Commissioner within 10 days after placing a commercial weighing or measuring device in service.<sup>26</sup>

The Commissioner is empowered to deny an application for, refuse to renew, revoke, or suspend a license or certificate or place a licensee or certificate holder on probation, if the holder has:<sup>27</sup>

- Violated the Act,
- Been convicted of a felony under any state or federal law,
- Committed fraud or deception in the procurement or attempted procurement of a license or certificate,
- Failed to comply with a lawful order of the Commissioner concerning the Act,
- Been convicted of deceptive trade practices under any state or federal law, or
- Used a commercial weighing or measuring device or moisture-testing device in deceptive trade practices.

Additionally, if a business “associate” has violated the Act, the Commissioner may deny an application. An “associate” is a partner, officer, director, or stockholder of more than 30 percent of a partnership or corporation, when the partnership or corporation is the applicant.<sup>28</sup>

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<sup>22</sup> § 35-14-124(1), C.R.S.

<sup>23</sup> § 35-14-124(2)(a), C.R.S.

<sup>24</sup> § 35-14-130, C.R.S.

<sup>25</sup> § 35-14-123(1), C.R.S.

<sup>26</sup> § 35-14-123(7), C.R.S.

<sup>27</sup> § 35-14-124.5(1), C.R.S.

<sup>28</sup> § 35-14-124.5(3), C.R.S.

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If the Commissioner finds there is reasonable cause to believe a violation of the Act has occurred, he or she may issue a cease and desist order. The order must explain the alleged violation(s) that must be ceased and notice that a hearing may be requested.<sup>29</sup> A violation of the Act can carry a fine of up to \$750 per violation; each day out of compliance constitutes a separate violation; and the penalty may be doubled for a second violation.<sup>30</sup> Before imposing a fine, the Commissioner may consider the effect of the fine on the business.<sup>31</sup>

Among the violations of the Act are:<sup>32</sup>

- Selling or offering for sale or hire, a device or instrument used to falsify any weight or measure;
- Disposing of any rejected or condemned weight or measure contrary to law or rule;
- Removing, breaking, or defacing, contrary to law or rule, any tag, seal, or mark placed on any weight or measure pursuant to the Act;
- Selling or offering for sale, less than the quantity represented on any commodity, thing, or service;
- Taking more than the quantity represented when a buyer furnishes the weight or measure;
- Acting as a certified weigher without being certified;
- Falsely certifying any net or gross weight;
- Refusing to weigh any article or thing that it is such person's duty to weigh;
- Refusing to state in any weight certificate anything that is required to be stated; and
- Altering a weight certification to use it for something other than for what it was issued.

The Act also provides criminal penalties for a person who willfully uses his or her weights or measures without authority or uses a counterfeit seal. Conviction is treated as a class 2 misdemeanor. The local district attorney has jurisdiction in such cases and all criminal fines are paid into the local county treasury.<sup>33</sup>

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<sup>29</sup> § 35-14-133(2), C.R.S.

<sup>30</sup> § 35-14-131(1), C.R.S.

<sup>31</sup> § 35-14-131(4), C.R.S.

<sup>32</sup> § 35-14-131(5), C.R.S.

<sup>33</sup> § 35-14-132, C.R.S.



## Program Description and Administration

The Commissioner of Agriculture (Commissioner) is directed to execute the Measurement Standards Act of 1983 (Act). The Commissioner has delegated authority to implement the Act to the Department of Agriculture’s Division of Inspection and Consumer Services (Division). The means by which the Division enforces the standards of the Act are by issuing licenses to commercial scale operations, certifying weighers and the people who service scales, and performing inspections to ensure that commercial weighing and measuring devices operate within the appropriate tolerances.

Table 1 lists the monetary and full-time equivalent (FTE) employee expenditures made to implement the Act during the period covered by this sunset review.

**Table 1**  
**Program Expenditures**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | Total Program Expenditures | FTE  |
|-------------|----------------------------|------|
| 11-12       | \$1,700,900                | 20.0 |
| 12-13       | \$1,900,000                | 20.5 |
| 13-14       | \$1,478,000                | 18.2 |
| 14-15       | \$1,453,000                | 18.2 |
| 15-16       | \$1,421,000                | 18.7 |

The monetary expenditures and FTE allocations fluctuated slightly during the review period. The monetary expenditure varied about 16 percent from beginning to end and the personnel allocation varied approximately six percent. Staff explained these fluctuations occurred due to internal program changes. Not included in the totals above are portions of two FTE that perform inspections on protein analyzers and moisture meters. The inspectors are part of a different team at the Division – the farm products team rather than the weights and measures team. The reported expenditures for implementing this portion of the Act are approximately \$5,400 annually.

The majority of the efforts of this program are field inspections performed by Division staff. Each inspector works a geographic region and inspects each of the devices in the region at least once per year. Each inspector is equipped with a computer, a vehicle, and the weights needed to certify the accuracy of a device. There are two basic types of scales. Large scales which can weigh loads of more than 1,000 pounds and can also weigh loads up to several tons. Large scales weigh railroad cars, trucks, scrap metal, livestock, and anything else that is sold by weight over the minimum threshold. Small scales which weigh loads up to 1,000 pounds are found in many retail settings. These settings include scales in grocery stores, marijuana shops, and any retail operation that sells commodities up to the 1,000-pound ceiling.

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Field inspectors also perform price verification tests on retail store scanners and weight verification tests on packaged items.

In addition to conducting field inspections, the program operates a metrology laboratory which verifies the accuracy of the weights and measures used by the inspectors and certified device service providers. The laboratory also certifies the accuracy of the light detection and ranging speed units, commonly known as radar guns, used by law enforcement. Upon request, the laboratory will certify the accuracy of the tuning forks used to calibrate radar guns, though doing so is not required by the Act.

Table 2 enumerates the field inspections, not including protein analyzers and moisture meters, made during the period considered for this sunset review.

**Table 2**  
**Measurement Standards Inspections**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | Scales         | Prices | Packages       |
|-------------|----------------|--------|----------------|
| 11-12       | Not available* | 1,254  | Not available* |
| 12-13       | Not available* | 1,236  | 1,777          |
| 13-14       | Not available* | 1,236  | 1,142          |
| 14-15       | 26,193         | 1,338  | 1,650          |
| 15-16       | 23,000         | 1,284  | 1,716          |

*\* The Division changed databases multiple times during the period examined for this review. Some of the data for this program was lost and are not available to report.*

Considering the two fiscal years for which there is complete data, fiscal years 14-15 and 15-16, the Division completed an average of 27,591 inspections per year.

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Table 3 enumerates the number of inspections made on the devices used for analyzing protein and testing moisture in grain.

**Table 3**  
**Moisture Meter and Protein Analyzer Inspections**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | Inspections |
|-------------|-------------|
| 11-12       | 215         |
| 12-13       | 259         |
| 13-14       | 283         |
| 14-15       | 267         |
| 15-16       | 272         |

Table 3 shows that there was very little fluctuation in the number of inspections made during the period studied for this sunset review. The Division averaged approximately 260 inspections per year during this time cohort.

## Licensing

An owner of a commercial scale must obtain a license from the Division to place it in service. Table 4 lists the number of licenses issued for certified devices in Colorado during the period examined for this sunset review. Each device must have its own license and be certified as accurate. Therefore, a single facility, such as a supermarket or a scrap yard, may have several licensed/certified devices. The device's license will have the parameters, or weight ranges, that it is designed to weigh accurately. The certification attests that it is accurate within those parameters.

**Table 4**  
**License/Certificates Issued**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | TOTAL          |
|-------------|----------------|
| 11-12       | Not available* |
| 12-13       | 8,100          |
| 13-14       | 8,093          |
| 14-15       | 8,029          |
| 15-16       | 7,972          |

*\* The Division changed databases multiple times during the period examined for this review. Some of the data for this program were lost and are not available to report.*

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Table 4 shows that the Division issues just over 8,000 licenses per year.

Certified weighers operate public scales. To obtain a certification an applicant must pass a test, submit a citizenship verification form, and pay a fee. The test is 16 rudimentary questions and according to Division staff, individuals rarely fail. Weigher certifications, both original and renewal, are assessed a \$25 fee. Certificates must be renewed annually. Table 5 lists the weigher certificate information.

**Table 5**  
**Certified Weighers**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | TOTAL          |
|-------------|----------------|
| 11-12       | Not available* |
| 12-13       | Not available* |
| 13-14       | 1,100          |
| 14-15       | 1,261          |
| 15-16       | 802            |

*\* The Division changed databases multiple times during the period examined for this review. Some of the data for this program was lost and are not available to report.*

Certified weighers must keep a register of all transactions they engage in for two years.

The Division also certifies companies that service licensed devices. Table 6 lists the number of companies that were certified to service devices during the period examined for this sunset review.

**Table 6**  
**Certified Device Service Providers**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | TOTAL          |
|-------------|----------------|
| 11-12       | Not available* |
| 12-13       | Not available* |
| 13-14       | Not available* |
| 14-15       | 61             |
| 15-16       | 63             |

*\* The Division changed databases multiple times during the period examined for this review. Some of the data for this program were lost and are not available to report.*

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The Division also licenses grain moisture testing devices and grain protein analyzers (collectively, devices). Table 7 enumerates the licensed devices during the period examined for this sunset review.

**Table 7**  
**Devices Licensed**  
**Fiscal Years 11-12 through 15-16**

| Fiscal Year | TOTAL |
|-------------|-------|
| 11-12       | 186   |
| 12-13       | 198   |
| 13-14       | 207   |
| 14-15       | 189   |
| 15-16       | 192   |

Table 7 illustrates very little variation in the number of licenses issued by the Division with approximately 194 issued annually. Though an inspection is required once per year, comparison of Table 3 and Table 7 shows that inspections are made more often.

### **Disciplinary Actions**

If an inspection determines that a commercial weighing or measuring device is not accurate, an inspector will typically place a blue tag indicating “Work Order” on the device. The tag indicates that the device is out of tolerance and must be repaired. Repairs must be made within 30 days unless extended by the Division.

A red tag indicating “Condemned” must be placed on a device that an inspector determines is too far out of compliance. When this occurs, the device cannot be used for any commercial purpose.

Only owners or certified service providers may repair, service, or place in service any approved commercial weighing or measuring device.<sup>34</sup> A service provider must submit a placing-in-service report to the Division within 10 days after placing a commercial weighing or measuring device in service.<sup>35</sup> After that occurs the Division makes a note that the device is back in compliance.

The Division does not have records concerning the number of red or blue tags issued because the Division considers that issuing a tag is not a formal disciplinary action. It is a warning to the operator to bring the device into compliance versus a fine which is considered discipline.

The Division does have the ability to issue fines of up to \$750 for each day out of compliance with the Act which may be doubled for a second violation.<sup>36</sup> Table 8 enumerates the fines issued during the review period.

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<sup>34</sup> § 35-14-123(1), C.R.S.

<sup>35</sup> § 35-14-123(7), C.R.S.

<sup>36</sup> § 35-14-131(1), C.R.S.

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**Table 8**  
**Fines**  
**Fiscal Years 11-12 through 15-16**

| <b>Fiscal Year</b> | <b>Number of Fines Imposed</b> | <b>Total Value of Fines Imposed</b> |
|--------------------|--------------------------------|-------------------------------------|
| 11-12              | 52                             | \$5,200                             |
| 12-13              | 48                             | \$4,800                             |
| 13-14              | 27                             | \$2,700                             |
| 14-15              | 26                             | \$3,600                             |
| 15-16              | 33                             | \$3,300                             |

The majority of the fines were issued for a failed price verification test, followed by a failed package test, which occurs when the contents of a package are below the declared net weight. While fines may be issued up to \$750 for a first offense, Table 8 shows that generally, the average fine is \$100.

### **Collateral Consequences – Criminal Convictions**

Section 24-34-104(6)(b)(IX), Colorado Revised Statutes, requires the Colorado Office of Policy, Research, and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Division does not possess the authority to deny or revoke any licenses or certifications based on criminal history.

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## Analysis and Recommendations

### Recommendation 1 – Continue the Measurement Standards Act of 1983 for 15 years, until 2033.

A primary purpose of a sunset review is to determine if regulation is necessary to protect the health, safety, or welfare of the public. The Measurement Standards Act of 1983 (Act) was established by the General Assembly to ensure uniform measurement standards for weights and measures in Colorado. The Department of Agriculture's Division of Inspection and Consumer Services (Division) is the agency that implements the Act.

Having standardized measurements for consumer goods, or any commercial transaction is as important as having a standardized currency. It is a principal way to determine the worth of many articles, substances, and/or goods available for purchase in the marketplace. Consider reading a food package and having different measurements for each of the ingredients or going to a supermarket to buy a pound of something and the number of ounces per pound varied from one store to the next. Standardization allows consumers to understand value, to compare commodities, and to envision things like size, scope and bulk. That understanding comes from the weights and measures being replicated accurately and consistently. Accuracy, standardization, and replication are equally important to those who are buying and those who are selling commodities.

The Act directs that the standards used must comport with the National Institute of Standards and Technology (NIST) Handbooks. NIST is a federal agency housed in the U.S. Department of Commerce responsible for promoting:

U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life.<sup>37</sup>

NIST provides the uniformity and standardization of weights and measures nationwide and the model standards necessary for Act implementation.

The Division inspects small commercial scales, package labeling for accuracy, and performs price verifications on marketplace scanners. It also conducts inspections of large scales which are scales that weigh commodities over 1,000 pounds. In addition to scale inspections, inspectors conduct moisture and protein measuring device checks. As with any of the inspections, accuracy is key for the moisture and protein devices because there are economic consequences for inaccuracy. The licensing and inspection functions of the Act are the subject of this sunset review.

Just as important as the field inspections, the Division operates a metrology laboratory which maintains the official standards of weights and measurements for the state of Colorado. The laboratory certifies the accuracy of the inspection weights used by the

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<sup>37</sup> NIST. *NIST Mission, Vision, Core Competencies, and Core Values*. Retrieved July 13, 2017, from <https://www.nist.gov/about-nist/our-organization/mission-vision-values>

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Division inspectors and certified device service providers. It also certifies the accuracy of the light detection and ranging speed units used by several Colorado local law enforcement agencies. Law enforcement expressed the need to have a disinterested third party verify the accuracy of the units to make cases stronger in the event there is a legal challenge.

Beyond inspecting and validating the accuracy of devices, the Division licenses every commercial scale in the state of Colorado, so it is familiar with its location and is able to record the results of the Division inspections; it certifies the weighers who operate the large commercial scales; it certifies companies that service devices that need to be repaired; and it licenses protein analyzers and moisture meters.

The importance of standardization of weights and measures in commerce cannot be overstated. To protect consumers, the Act demands that accuracy of devices is verified, confirmed, and documented by the Commissioner. The processes of inspection and certification established by the Division ensure accuracy and precision in the marketplace.

Given the high stakes of inaccurate measuring devices in the marketplace, it is necessary for the state to check the accuracy of the devices to protect the health, safety, and welfare of the public. Because this sunset review did not uncover any other issues that require legislative action or reexamination in the near future, there does not appear to be a need to perform another sunset review soon. Therefore, the General Assembly should continue the Act for 15 years, until 2033.