

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture _____

Regulation/Package Title: NIST Handbook 44 Update _____

Rule Number(s): 901:6-1-01 _____

Date: 10/25/2013 _____

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

- 1. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

AMENDED: Rule 901:6-1-01 is being amended to update to the most current edition of the “National Institute of Standards and Technology (NIST) Handbook 44”, but the substance of the rule is not being changed.

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

R.C. 1327.49

- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The Department is adopting the amended rule to remain in compliance with and consistent with the statutory authority for these rules.

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

The amendment to 901:6-1-01 will remove potential confusion regarding what edition of NIST Handbook 44 governs and where to contact NIST to obtain a copy of the standards incorporated by reference in the rule at their website.

Development of the Regulation

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

National Conference on Weights & Measures
County Auditor’s Association
Scale Manufacturers Association
Meter Manufacturers Association

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Ohio Petroleum Council
Ohio Petroleum Marketer's & Convenience Stores

8. 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 had no further comment or questions regarding the changes.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules are based on standards from the National Conference on Weights and Measures and NIST wherever applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Not applicable, as these rule amendments are narrow in scope to reflect updated edition and contact information to obtain the incorporated NIST Handbook 44 standards.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

As these regulations set minimum standards to protect the public, performance-based regulations are not appropriate.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Department is given the sole regulatory authority over these devices through R.C. 901.10.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

This rule amendment shall be uniformly applied to weights and measures operators without regard to the type of operation. Inspections and investigations are conducted with a focus on accuracy for the public, and compliance with the industry standards and the manufacturer's requirements for the devices is uniformly applied.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

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a. Identify the scope of the impacted business community;

The amended rule could impact all operators of weights and measures scales and devices.

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

Sealing of devices is required; however that requirement and the fees are set by statute. Fines are set by these rules and can adversely impact any operator found not to be in compliance. The amended rule provides minimum operating standards with which owners and operators of devices must comply, as well as inspections at regular intervals.

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.

The rule amendment is not expected to have a direct fiscal adverse impact, as it does not impose a new requirement for action. The amendment to 901:6-1-01 clarifies the contact information for NIST to obtain the standards and the edition date of Handbook 44, but the rule already requires compliance with NIST Handbook 44 standards.

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

The regulatory intent of the statute and rules is to protect the public and ensure accuracy in business dealings by establishing minimum standards for these business communities, accordingly the adverse impact is considered to be justified.

Regulatory Flexibility

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

As the primary purpose of these rules is ensuring the accuracy of weights and measures devices in conducting business, exemptions for a smaller operator would not be applicable.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Paperwork violations rarely reach the enforcement stage so long as the operator is willing to correct the violation and has no history of prior violations. 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.

18. 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.