

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: May 4, 2017

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☐ Rescinded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.

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. These changes are the result of an annual conference which has representatives from all fifty states and stakeholders in the weights and measures industry. The amendments to 2016 Handbook are mostly clerical in nature. Any changes made effect the regulators and not the industry.

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.

Stakeholder List 2016			
First Name	Last Name	Title	Affiliation
William	Rogers	President	AES Scale
Ron	Milburn	Director of Operations	AFPD
Patrick	Moody	President	All American Scale
Graham	Baker	Sales Manager	ANGI Energy
Robert	Eshenbaugh	Associate Director	API Ohio
Fred	Gottfried	President	Ashland Scale
John	Spirtoff	Vice President	Bob's Meter Testing
James	McGetrick	Director of Affairs	BP
Andrew	Brechbuhler	President	Brechbuhler Scales
David	Biro Sr.	President	Brio Scales
Steve	Smith	Owner & Manager	Buckeye Scale
Kurt	Leib	Partner	Capital Advocates
Jody	Licursi	Vice President	Capitol Strategies group LLC
Eric	Golden	Vice President	Cardinal Scales
Jason	Phillips	Policy Director	Clean Fuels Ohio
Sam	Spofforth	Executive Director	Clean Fuels Ohio
Frances	Lesser	Executive Director	County Auditor's Association
Lou	Straub	Regulatory Affairs Consultant	Fairbanks Scales
Clifford	Ursich	President	Flexible Pavements of Ohio
Gordon	Johnson	Manager Regulatory Engineering	Gilbarco Inc.
Mark	Holtgreven	President & CEO	Holtgreven Scale
Leonard	Hubert	President	Hubert Associates
Kristy	Moore	Director	KMoore Consulting LLC
John	Kolenski	Director of Compliance	Kroger Company
Jack	Pangraizo	President	LTS Scale
Dan	Reinhart	Product Quality	Marathon Petroleum
William	Schedel Jr.	Manager State Gov. Affairs	Marathon Petroleum
Rebecca	Richardson	Regulatory Specialist	MARC-IV Consulting
Russ	Vires	Quality & Compliance	Mettler-Toledo Inc.

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		Mgr.	
Robert	LaGasse	Executive Director	Mulch & Soil Council
John	Spencer	CEO	Mulch Manufacturing
Georgia	Harris	Acting Chief Weights & Measures	National Institute of Standards & Technology
David	Calix	Account Analyst	NCR Corporation
Jeff	Clarke		NCVG America
Patrick	Jacomet	Executive Director	Oh Aggregates & Industrial Minerals
Jenn	Klein	President	OH Chemistry Technology Council
Lt. William	Menendez	Compliance Officer	OH State Patrol
Christopher	Henney	Executive Director	Ohio Agri Business Association
Holly	Nagle	Manager of Public Affairs	Ohio Council of Retail Merchants & Affiliates
Lora	Miller	Director of Governmental Affairs	Ohio Council Retail Merchants
Kristin	Mullins	President & CEO	Ohio Grocers
Derek	Dalling	Executive Director	Ohio Propane Association
George	Colvin	President	Ohio Ready-Mix Concrete
Jennifer	Rhoads	President & CEO	OPMCA
Bill	Behrendt	Director of Regulatory Affairs	OPMCA
Leah	Dorman		Philbro Animal Health Corp.
Chris	Guay	Regulatory Fellow	Proctor & Gamble
Richard	Suiter	Consultant-Owner	Richard Suiter Consulting
Edward	Luthy	Owner & Manager	Schenck Process
Tom	Coffman	Branch Manager	Semco Outdoor
Tom	Fontana	Executive Director	Soybean Council
Adam	Ward	Executive Director	Soybean Council
Timothy	Columbus	Attorney Steptoe & Johnson	Steptoe & Johnson LLP
Virgil	Strickler	Director	The Ohio Expo Center
Sanford	Simon	Director Regulatory Affairs	The Scotts Company
Henry	Kellogg II	Director Service Division	Tolt Solutions
Doug	Myers	Director W&M	Wal-Mart Corporation
Randy	Moses	Director of Engineering	Wayne Fueling Systems
Jim	Buchy	State Representative	

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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 were generally supportive.

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:

a. Identify the scope of the impacted business community;

Handbook 44 impacts 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

The amendments to the 2016 edition of Handbook 44 do not impact the business community in any substantial way.

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. The amendment to 901:6-1-01 alters the edition date of Handbook 44. There are no new requirements for action from the 2016 edition.

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.