

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: December 28, 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☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

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 2018 Handbook were mostly clerical in nature. Specifically, several changes were made to ensure that the codes aligned throughout the Handbook.

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.

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National Conference on Weights & Measures
 County Auditor's Association
 Scale Manufacturers Association
 Meter Manufacturers Association
 Ohio Petroleum Council
 Ohio Petroleum Marketer's & Convenience Stores

Frances	Lesser	County Auditor's Association
Russ	Vires	Mettler-Toledo Inc.
Henry	Kellogg II	
Norman	Peiffer	The Anderson's
Virgil	Strickler	The Ohio Expo Center
Kurt	Leib	Capital Advocates
Steve	Grabski	Wal-Mart Corporation
Dan	Reinhart	Marathon Petroleum
William	Schedel Jr.	Marathon Petroleum
Lou	Straub	Fairbanks Scales
Jennifer	Rhoads	OPMCA
Kristin	Mullins	Ohio Grocers
Tom	Fontana	Soybean Council
Rebecca	Richardson	MARC-IV Consulting
Leonard	Hubert	Hubert Associates
Leonard	Holtgreven	Holtgreven Scale
Leah	Dorman	Ohio Farm Bureau
Kenneth	Caubbe	Ohio Ready-Mix Concrete
Clifford	Ursich	Flexible Pavements of Ohio
Patrick	Jacommet	Oh Aggregates & Industrial Minerals
Jack	Pounds	OH Chemistry Technology Council
Shelby	Neal	National Biodiesel Board
Jerry	Hutton	Hocking Energy College
Mike		Stites Scale
Nigel	Mills	Hobart Scale
Chris	Guay	Proctor & Gamble
Andrew	Brechbuhler	Brechbuhler Scales
Jack	Pangraizo	LTS Scale
David	Biro Sr.	Brio Scales
James	Gottliebson	Interface Logic Systems
John	Kolenski	Kroger Company

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John	Spencer	Mulch Manufacturing
John	Spirtoff	Bob's Meter Testing
Kenneth	Gunn	Livingston Seed
Edward	Luthy	Stock Equipment
Patrick	Moody	All American Scale
Paul	Trestan	Systems Alternatives International
Perry	Jacobs	The Shared Logic Group
Ralph	Harris	Stock Equipment
Sanford	Simon	The Scotts Company
Tom	Fink	ITW Food Equipment
Thomas	Herrington	Nestle Company
William	Rogers	AES Scale
William	Hammock	The Sherwin Williams Company
Wes	Bahr	Ability Computing LTD
Fred	Gottfried	Ashland Scale
Jim	Buchy	Buchy Foods
Lt. Robert	Warner	OH State Patrol
David	Calix	NCR Corporation
Steve	Smith	Filing Scale
Gordon	Johnson	Gilbarco Inc.
Carol	Hockert	National Insititute of Standards & Technology
Eric	Golden	Cardinal Scales
Manny	Scilimenti Sr.	Petro-Com Corporation
Gary	King	Ohio Agri Business Association
Richard	Wahl	Association of Grain Regulatory Officials

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 2018 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 2018 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.