



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Weights and Measures Ch 1 Revision of Handbook 44

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

Date of Submission for CSI Review: 5/26/23

Public Comment Period End Date: 6/16/23

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 1 rules (FYR? 1)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☐ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. 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- This rule is being amended to update to the most current edition of the “National Institute and Technology Handbook 44” and the “National Institute of Standards and Technology 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.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Revised Code 1327.49

4. 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

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5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable

6. **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.

7. **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.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No

### **Development of the Regulation**

9. **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.*

Stakeholders were contacted by email on November 4, 2022.

First Name	Last Name	Affiliation
Tom	Pappas	County Auditor's Association
Russ	Vires	Mettler-Toledo Inc.
Virgil	Strickler	The Ohio Expo Center
Kurt	Leib	Capital Advocates
Stratt	Pinagel	Wal-Mart Corporation
Dan	Reinhart	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

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Mark	Holtgreven	Holtgreven Scale
Leah	Dorman	Philbro Animal Health Corp.
George	Colvin	Ohio Ready-Mix Concrete
Jenn	Klein	OH Chemistry Technology Council
Andrew	Brechbuhler	Brechbuhler Scales
David	Biro Sr.	Brio Scales
John	Kolenski	Kroger Company
John	Spencer	Mulch Manufacturing
John	Spirtoff	Bob's Meter Testing
Patrick	Moody	All American Scale
Sanford	Simon	The Scotts Company
Bob	Esber	Ashland Scale
Jim	Buchy	
David	Calix	NCR Corporation
Steve	Smith	Buckeye Scale
Katrice	Lippa	National Insitute of Standards & Technology
Eric	Golden	Cardinal Scales
Kristy	Moore	KMoore Consulting LLC
Robert	Eshenbaugh	Marathon Petroleum
Robert	LaGasse	Mulch & Soil Council
Randy	Moses	Wayne Fueling Systems
Lora	Miller	Ohio Council Retail Merchants
Richard	Suiter	Richard Suiter Consulting
Jody	Licursi	Capitol Strategies group LLC
Derek	Dalling	Ohio Propane Association
Steven	Trueman	Brechbuhler Scales
John	Pfister	Kanawha Scales & Systems
John	Steele	Kanawha Scales & Systems

**10. 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 one comment was received from the Ohio Ethanol Producers Association which was in favor of the amended rule.

**11. 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.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not**

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appropriate? If none, why didn't the Agency consider regulatory alternatives?  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

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.

**13. 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.

**14. 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**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

Handbook 44 impacts all operators of weights and measures scales and devices.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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 amendments to the 2023 edition of Handbook 44 do not impact the business community in any substantial way. 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.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

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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.

**17. 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**

**18. 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.

**19. 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.

**20. 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.