

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: National Type Evaluation Program

Rule Number(s): 901:6-2-01

Date: February 4, 2016

Rule Type:

New

☒ 5-Year Review

☒ Amended

Rescinded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.

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.

The rule in this package amplifies Ohio Revised Code Section 1327.49 which states the specifications, tolerances, and regulations for commercial weighing and measuring devices adopted by the National Institute of Standards and Technology Handbook 44 shall be the regulations accepted by the State of Ohio unless otherwise modified or amended by the Director of the Ohio Department of Agriculture (Department).

901:6-2-01 sets forth the specific devices and equipment covered by type evaluations in the National Institute of Standards and Technology Handbook 44 (2016). This rule is being

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amended in order to add commercial weighing and measuring devices required to have a certificate of conformance.

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

O.R.C. 1327.49 and 1327.50

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. The rule in this package is modeled off of the National Institute of Standards Technology (NIST) Handbook 44 (2016). NIST is a non-regulatory federal agency within the U.S. Department of Commerce.

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's Division of Weights and Measures is tasked with protecting Ohio businesses and consumers by ensuring weighing and measuring devices are traceable to a National Type Certificate of Conformance and give readings that are accurate and are of such construction that they conform to the official standards. As stated above, there is no federal requirement for the adoption of these regulations. However, Ohio Revised Code Section 1327.49 states that the specifications, tolerances, and regulations for commercial weighing and measuring devices adopted by the National Institute of Standards and Technology Handbook 44 shall be the regulations accepted by the State of Ohio unless otherwise modified or amended by the Department.

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

The Department's Division of Weights and Measures works with county and city weights and measures programs to ensure weighing and measuring devices conform to certificate of conformance and give true and accurate readings. This rule is judged as being successful when inspectors find few violations and receive few complaints from consumers.

Development of the Regulation

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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.

The proposed rule was sent to the following stakeholders on January 25, 2016 via email:

- A&D Medical, Adnan Alam
- Ability Business Computing, Wes Baehr
- ABOL Software, Marty Stamps
- Acom, Inc., Sam H. Baek
- Adam Equipment, George Costa
- ADSI, Barry Gebler
- AgVantage Software, Inc., Lisa Sick
- AGWEIGH, Cullen Casey
- Apogee Information Technology, LLP, Kevin Mason
- Archer Daniels Midland Company, Roger Lower
- Atrax Group NZ Limited, Geoffrey Maurice
- Attitude POSitive, Rocky Zohar
- Automated Access Solutions, Paul Ciszewski
- Avery Weigh-Tronix, Leon Lammers
- Avery Weigh-Tronix, Kevin Detert
- Backus Foodtec BV, Geert Lowet
- Besser Appco, Robert Frisby
- Bizerba, Horst Meister
- Bizerba USA Inc., John Wind
- BMG Controls Inc., DBA BMG Seltec, James Herriman
- Brecknell (Salter), Jerome Lager
- B-Tek, Eric Pfiffner
- B-Tek Scales, Inc., James Foley
- B-Tek Scales, Inc., Ed Luthy
- B-Tek Scales, Inc., Todd Locker
- B-Tek Scales, Inc., Andy Brechbuhler
- B-Tek Scales, Inc., Michael Cudnik
- B-TEK Scales, LLC, Jason Paulus
- B-TEK Scales, LLC, Richard Spradling
- Cambridge Scale Works, Inc., Eric Loy
- Cambridge Scale Works, Inc., Larry Buckwalter
- Cardinal Scale Manufacturing Company, Steve Langford (Cardinal)

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- CAS Corporation, Ki-Young Lee
- CAS USA Corporation, William Moutenot
- CBJ Designs & More, LLC, Clyde Jones
- Charder Electronic Co., Ltd., Angela Lu
- Charter Dura-Bar, Octavio Rodriguez
- Citizen Scale, Inc., Tejas Shal
- CMI Roadbuilding, Inc., Charles Haag
- Command Alkon, Inc., Nicholas Fagan
- Concrete Equipment Co. (CON-E-CO), Don Hansen
- Control Assemblies Company, Ryan Gahlon
- Creative Automation, Kevin Rellergert
- Datalogic Automation, David Wurz
- Datalogic Automation, Anthony Romeo
- Datalogic Scanning, Inc., Ken Wyman
- Detecto Scale Co. (Cardinal Scale), Steve Langford (Detecto)
- Detecto Scale Compnay, Eric Golden
- Digi-Star, LLC, Breck McHenry
- Discount Drug Mart, Mike Filbert
- Division Services, Darrell Owens
- Division Weigh To Go!,Darrell Owens
- Doran Scales, Inc., Mark Podl
- Doran Scales, Inc., Dan Fay
- Doran Scales, Inc., Bill Snyder
- Emery Winslow Scale Company, Rainer Holmberg
- Emery Winslow Scale Company, Sam R Sagarsee
- Erie Strayer Company, Barry Kirk
- Espera-Werke GMBH, Peter Wolfe
- Excell Precision Co., Ltd., Frank Hsiao
- Fairbanks Scales, Keith Charron
- FarmChem Corp.,Ryan Bergman
- FKI Logistex, Greg Roth
- Flowserve Corporation, Ryan Bergman
- FreightScan, LLC, Sheri Ascencio
- FreightSnap, LLC, Michael Eichenberg
- Fulcrum, Inc., Karl Nowosielski
- Future POS, Inc., Jason Thompson
- Gainco, Inc., Geoffrey Rapp

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- Gainco, Inc., Kent Crandell
- Global Sensor Systems, Inc., Ray H. Glenn
- Global Software, Inc., Christopher Harn
- Globe Food Equipment Co., Brad Kennedy
- Herbert Industrial Limited, David Pewter
- Hobart Corporation, Tom Jones
- Hobart Corporation, Kraig Wooddell
- Holtgreven Scale & Electronics Corp., Mark Holtgreven
- Honeywell Scanning & Mobility, Patrick Helton
- Horizon Software International, LLC, Chad Dorda
- Infotech Logistics BV, Arjan van de Wiel
- Intercomp Corporation, Matt Young
- Interface Logic Systems, Inc., James Gottliebson
- Intermec STC by Honeywell, Chantal Pimm
- International Road Dynamics Corp., Scott Sherwood
- International Road Dynamics, Inc., Gary Doecker
- Inventure Systems, Mark Wallgren
- Inversiones Iderna, S.A., Donald Barrett
- IRD Technologies, Keith Bangasser
- Ishida Co., Ltd., Masako Asahina
- Ishida Co., Ltd., Mr. Hideki Nahara
- Ishida Co., Ltd., Dexter Urasawa
- ISL Machinery, Ali Yousefi
- J.M. Bard and Bard Company, James Bard
- Junge Control, Inc., Dave Junge
- Kahler Automation, Dennis Turner
- Kanawha Scales & Systems, Inc., John Pfister
- Kanawha Scales & Systems, Inc., Rob Barker
- Kanawha Scales & Systems, Inc., Duane Bennett
- Kaplan Paving, Travis Mick
- Kewill Solutions North America, Inc., Thomas Wieser
- Laumas Elettronica SRL, Pietro Grottoli
- LOC Software, Don Lafontaine
- Logivision, Inc., Peter Bohonis
- LTS Scale Company, Jack Pangrazio
- Marel Limited, Kevin Barwood
- Marel USA, Petur Petursson

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- Measuretek Enterprise, Ltd., Betty
- Metrologic Instruments, Inc., Ed Baxter
- Metrologic Instruments, Inc., Stephen Krupsky
- Mettler-Toledo, GmbH, Bob Hamilton
- Mettler-Toledo, GmbH, Reiner Letsch
- Mettler-Toledo, LLC, Scott Davidson
- Mettler-Toledo, LLC, Darrell Flocken
- Micros Systems, Inc., Nick Low
- Murry's, Louis Ford
- National Bulk Equipment, Dave Root
- National Computer Corporation, Inc., Chuck Prince
- NCR Corporation, Scott Henry
- NCR Corporation, Bernard Toussant
- New Brunswick International, Inc., Takashi Kawazoe
- Nextep Systems, Carol Szwed
- Norwood Scale, Shane Sharbono
- Nucor Steel, Delwin Carlson
- Ohaus Corporation, Robert Hansen
- Old Castle, Joe Allen
- Optima Scale Manufacturing, Inc., John Fu
- Osprey Retail Systems, Inc., Dale Hilt
- Ossid Corporation, Joe Grove
- Packaging Solutions, Inc., James Skrobot
- Pandora Grain & Supply Inc., Gary L. Luginbill
- Pelstar, Tony Harvey
- Penn Scale Manufacturing Co., Inc., Larry Biren
- Pennsylvania Scale Company, Rob Woodward
- Phoenix Contact, Arnold Offner
- Pitney Bowes, Edward Bass
- Postea, Inc., Mark Robinson
- Prime Scales, Edward Pan
- PSC, Inc., Jerry Kalina
- Publix Supermarkets, George Grosskopf
- Quantronix, Inc., Robert Kennington
- RAVAS Europe, B.V., Jon Heinlein
- RAVAS USA, LLC, Jon Heinlein
- Retalix USA, Inc., Doug Bishop

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- Retalix USA, Inc., Terry Dickerson
- Rice Lake Weighing Systems, Paul Lewis
- Rinstrum, Inc., John Lawn
- RSR Corporation, David Powell
- Rusty's Weigh Scales and Service, Aaron Bennett
- Salter Brecknell Weighing Products, Mark Erickson
- Scale King, Rusty Membreno
- Schenck Process GmbH, Ulrich Rauchschwable
- Schneider Electric, Donna Smalls
- Scientech, Inc., Robert Lee
- Scriptech LLC, Gary Steepleton
- Seedburo Equipment Company, Alan Mohler
- Shinko Denshi Co., LTD, Yuji Tsutsumi
- Sick, Inc., Leslie Hall
- Sick, Inc., Rick Lydon
- Sick, Inc., Dev Goyal
- Siemens AG, Jim Doyle
- Software Development dba Mi9, Barry Tyson
- Software Solutions, Bob Leach
- Solutions-NOW, Gayle Kennedy
- Specialty Cash Register Co., Inc., Mark Story
- Specialty Granules, Inc., Brandon Kimes
- SPX GSE Scale Systems, Colleen Dischinger
- Stephens Manufacturing Company, Inc., Greg Meadows
- Sudenga Industries, Brad Lansink
- SysTec, GmbH, Klaus Bernards
- Systems Alternatives International, LLC, John Underwood
- Systems Associates, Inc., Steven J. Beitzel
- Tanita Corporation of America, Toshihiko Ishikawa
- Teraoka Seiko Co. Ltd, Ayatoshi Goto
- Thermo Electron Corporation, Martin Lymn
- Thermo Fisher Scientific, Paul Thronson
- ThinkSmart, Inc., Greg Hoelscher
- Toshiba Global Commerce Solutions, Barbara Blackburn
- Toshiba Global Commerce Solutions, Gary Fails
- Transcell Technology, Inc., Jon Heinlein
- Triner Scale & Manufacturing Co., Inc., John Wendt

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- Triner Scale & Mfg. Co. Inc., Ray Wendt
- TSW Automation, Paul Batson
- Unimin Corporation, Rajinder Singh
- USC, LLC, Brian Bradley
- Vitronic, GmbH, Olaf Hilgenfeld
- Wal-Mart Stores, Inc., Lee White
- Weighpoint, Inc., Gerald Simons
- WeighTech, Inc., David Roets
- World Trade Distribution, Cindy Johnston
- Yamato, Larry Goodbar
- Yamato, Jessie Turrietta
- Yargus Manufacturing, Larry Yargus

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The above listed stakeholders were given until January 29, 2016 to review and comment on the proposed rule.

Kraig Wooddel of Hobart Weigh Wrap submitted comments on January 27, 2016 regarding the rule's requirement that a device be traceable to a certificate of conformance prior to use for commercial or law enforcement purposes. Mr. Wooddel raised concern regarding this requirement because sometimes a field test may be scheduled prior to receiving a certificate of conformance. The Department responded to Mr. Wooddel on January 27, 2016 and directed him to Ohio Revised Code Section 1327.50(E) which permits the Director to grant an exemption when it is appropriate for the maintenance of good commercial practices in the state. The Department has discretion to exempt the requirement that a device have a certificate of conformance prior to being placed in the field. Revised Code Section 1327.50(E) satisfied Mr. Wooddel's concerns.

The Department also received comments from Michael Noble of Oracle on January 27, 2016. Mr. Noble asked about the Department's intent to require certification of conformance for point of sale systems not connected to a scale. After discussing Mr. Noble's concerns and reviewing the National Conference on Weights and Measures Publication 14, the Department has decided to remove the point of sale without a scale from the rule's certificate of conformance requirement as most of these are used in back rooms of stores which do not require a certification. Therefore the Department has decided to remove this certification requirement from the proposed rule.

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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 requirements that are contained in this rule are modeled off of NIST Handbook 44 (2016), a National Standard that is used in most states by either adopting the entire handbook or portions of the handbook.

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?

The Department is statutorily tasked with prescribing the appropriate specifications, tolerances, and regulations for commercial weighing and measuring devices. The requirements that are contained in this rule are modeled off of the NIST Handbook 44 (2016), which is adopted by 49 states in its entirety and by 1 other states under Administrative Authority. For these reasons, no other regulatory alternatives were considered.

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.

Revised Code Section 1327.49 requires that the specifications, tolerances, and regulations for commercial weighing and measuring devices adopted by the National Institute of Standards and Technology Handbook 44 be the regulations accepted by the State of Ohio unless otherwise modified or amended by the Director. Therefore, the Department did not consider performance-based regulations.

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 to prescribe the requirements contained in this rule package under O.R.C. 1327.50.

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 shall be uniformly applied to all scale and meter manufacturers. Inspections and investigations are conducted with a focus on compliance with industry standards.

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;

This rule applies to scale and meter manufacturers who sell commercial devices to businesses throughout the United States. Ohio operates one of four National Type Evaluation Laboratories in the United States. The Department's clients support the National Type Evaluation Program and encourage that the Department's rules reflect NIST Handbook 44 and NCWM Publication 14. By adding the additional devices to this rule, the rule will align to the above publications and create uniformity throughout the United States.

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

Fines do not occur unless a business continually violates the law. Businesses found in violation are given fourteen (14) days to correct the violations(s). If the violation(s) continue after corrective measures are taken, fines may be implemented.

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 impact on the business community is minimal as many businesses already adhere to these requirements since they are adopted in the NIST Handbook 44 (2016), a national standard adopted by 49 states in its entirety and by 1 other states under Administrative Authority.

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

The regulatory intent of these rules is to protect consumers by eliminating from use, weights and measures and weighing and measuring devices that give readings that are false and are of such construction that they are not reasonably permanent in their adjustment or will not repeat their indications correctly. This rule will provide equity in the marketplace based on methods recognized by national standards.

Regulatory Flexibility

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

Ohio Revised Code Section 1327.50(E) permits the Director to grant an exemption when it is appropriate for the maintenance of good commercial practices in the state.

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 a business is willing to correct the violation and has no history of prior violations. First-time offenders are given fourteen (14) days to correct a problem. If the issue remains unresolved, violators are routinely offered settlements appropriate to the circumstances of the violation. In almost all cases violators 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. Many practices are already in place.