

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

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Little Rock, Arkansas 72201-1094

(501) 682-5070

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Agriculture

Department Plant Industries Division

Contact Wade Hodge E-mail wade.hodge@agriculture.arkansas.gov Phone 501-225-1598

Statutory Authority for Promulgating Rules ACA §§ 4-18-303; 4-18-328; 4-18-312(m); and 4-108-212

Rule Title: ARKANSAS STATE PLANT BOARD RULES REGARDING THE ADOPTION OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) HANDBOOKS

Intended Effective Date

(Check One)


<input type="checkbox"/> Emergency (ACA 25-15-204)	Legal Notice Published	<u>March 6 - 8, 2021</u>
<input checked="" type="checkbox"/> 10 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	<u>April 4, 2021</u>
<input type="checkbox"/> Other _____ (Must be more than 10 days after filing date.)	Reviewed by Legislative Council	<u>May 21, 2021</u>
	Adopted by State Agency	<u>December 2, 2020</u>

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

<u>Linda Luebke</u>	<u>linda.luebke@agriculture.arkansas.gov</u>	<u>May 24, 2021</u>
Contact Person	E-mail Address	Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

	Signature
<u>501-225-1598</u>	<u>wade.hodge@agriculture.arkansas.gov</u>
Phone Number	E-mail Address
<u>Chief Counsel</u>	Title
<u>May 24, 2021</u>	Date

**ARKANSAS STATE PLANT BOARD
RULES REGARDING THE ADOPTION OF THE NATIONAL INSTITUTE OF
STANDARDS AND TECHNOLOGY (NIST) HANDBOOKS**

Adoption of NIST Handbook 44

The Arkansas State Plant Board (State Plant Board) hereby adopts the NIST Handbook 44, as amended from time to time by the National Conference on Weights and Measures (NCWM), as the uniform standards regarding the regulation of specifications, tolerances, and other technical requirements for weighing and measuring devices to be enforced by the Arkansas Bureau of Standards.

Adoption of NIST Handbook 112

The State Plant Board hereby adopts the NIST Handbook 112, as amended from time to time by the NCWM, as the uniform standards regarding the procedures for commercial weighing and measuring devices to be enforced by the Arkansas Bureau of Standards.

Adoption of NIST Handbook 130

The State Plant Board hereby adopts the NIST Handbook 130, as amended from time to time by the NCWM, as the uniform standards regarding the regulation of legal metrology and engine fuel quality to be enforced by the Arkansas Bureau of Standards.

Notwithstanding the provisions of the NIST Handbook 130, the Arkansas State Plant Board hereby adopts the following provisions regarding the regulation of legal metrology and engine fuel quality, which shall supersede any conflicting provisions within NIST Handbook 130:

Retail Dispenser Labeling of Fuel Ethanol. Each retail dispenser of fuel mixtures containing no more than ten (10) percentage denatured ethanol shall be labeled: “This fuel product may contain up to 10 percentage ethanol.” Retail dispensers of fuel ethanol of more than ten (10) percentage ethanol shall be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word “ethanol” (Example: E15 Ethanol).

Documentation. When products regulated by this rule are sold, an invoice, bill of lading, shipping paper, or other documentation must accompany each delivery other than a retail sale. This document must identify the quantity, the name of the product, the particular grade of the product, the applicable automotive fuel rating, and oxygenate type and content (if applicable), the name and address of the seller and buyer, and the date and time of the sale. Documentation must be retained at the retail establishment for a period not less than thirty (30) days.

Adoption of NIST Handbook 133

The State Plant Board hereby adopts the NIST Handbook 133, as amended from time to time by the NCWM, as the uniform standards regarding the regulation of checking the net contents of packaged goods to be enforced by the Arkansas Bureau of Standards.

Violations

Any person that violates a provision of this rule or the standards contained in NIST Handbooks 44, 112, 130, or 133 shall be subject to enforcement action pursuant to the “Arkansas State Plant Board Bureau of Standards Enforcement Response Rule.”

Effect on Existing Rules

This rule supersedes any prior rules promulgated by the Arkansas State Plant Board or Bureau of Standards pertaining to NIST Handbooks 44, 112, 130, and 133.

Severability

If any court of competent jurisdiction finds provisions of this rule invalid or unenforceable, the remaining provisions shall not be affected or impaired and shall continue in force and effect as if the invalid provisions had not existed.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture
DIVISION State Plant Board/ Plant Industries
DIVISION DIRECTOR Scott Bray, State Plant Board Director
CONTACT PERSON Wade Hodge
ADDRESS #1 Natural Resources Drive, Little Rock, AR 72205
PHONE NO. 501-219-6361 FAX NO. _____
E-MAIL scott.bray@agriculture.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Wade Hodge; Scott Bray
PRESENTER E-MAIL wade.hodge@agriculture.arkansas.gov;
Scott.Bray@agriculture.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Adoption of National Institute of Standards and Technology (NIST) Handbooks
2. What is the subject of the proposed rule? To establish that the National Institute of Standards and technology shall be the primary source of state standards of weights and measures.
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x _____
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No x _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes ☒ No ☐ If yes, please provide a brief summary explaining the rule. See the attached memo.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☐ No ☒ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”** (See attachment)

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. ACA §§ 4-18-303; 4-18-328; 4-18-312(m); and 4-108-212
7. What is the purpose of this proposed rule? Why is it necessary?
Ark. Code Ann. § 4-18-303 provides that NIST “shall be the primary state standard for weights and measures”. The Bureau of Standards is charged with the duty to enforce weights and measures standards in the state, and this rule informs those subject to regulation what the standards are.
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.agriculture.arkansas.gov
9. Will a public hearing be held on this proposed rule? Yes ☒ No ☐
If yes, please complete the following:
Date: April 2, 2021
Time: 9:30a.m.
Place: 1 Natural Resources Drive, Little Rock
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
April 5, 2021
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
May 25, 2021
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture
DIVISION State Plant Board
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Arkansas Pest Control Law Rules and Regulations

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ___ No X
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes x No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes x No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
 - (b) The reason for adoption of the more costly rule;
 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
 - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____ 0 _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____ 0 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____ 0 _____

Next Fiscal Year

General Revenue _____

Federal Funds _____

Cash Funds _____

Special Revenue _____

Other (Identify) _____

Total _____ 0 _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0 _____

Next Fiscal Year

\$ 0 _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ none _____

Next Fiscal Year

\$ none _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes_____ No__x_____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

March 3, 2021

SUMMARY OF THE PROPOSED RULE REGARDING THE ADOPTION OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY HANDBOOKS

Purpose

This memorandum analyzes the proposed Arkansas State Plant Board (Plant Board) Rules Regarding the Adoption of the National Institute of Standards and Technology (NIST) Handbooks (Proposed Rule) to be administered by the Arkansas Department of Agriculture – Bureau of Standards (Department).

Background

The Rule was drafted to eliminate the need for perpetual rulemaking. The Proposed Rule adopts NIST Handbooks 44, 112, 130, and 133 “as amended from time to time.” Therefore, any revisions to the NIST Handbooks will be automatically adopted, fulfilling the Plant Board’s statutory obligation to maintain traceability with national weights and measures standards, and alleviate the burden of yearly rulemaking for every change to the referenced NIST Handbooks.

The Plant Board Bureau of Standards Committee approved the Rule on November 10, 2020. The full Plant Board approved the Rule on December 2, 2020.

Discussion

NIST was established by the United States Congress in 1901 to develop national standards for uniform measurements in commerce, science, and technology. It has developed standards that are generally recognized and adopted across multiple industries and disciplines.

Ark. Code Ann. § 4-18-303 provides that NIST “shall be the primary state standard for weights and measures”. The Arkansas State Plant Board is authorized to adopt the following NIST Handbooks by rule:

- NIST Handbooks 44 and 112 as the rules governing standards for weighing and measuring devices (Ark. Code Ann. § 4-18-328);
- NIST Handbook 130 as the rules governing metrology and engine fuel quality (§ 4-108-212); and
- NIST Handbook 133 as the rules governing the “checking of the net contents of packaged goods” (Ark. Code Ann. § 4-18-312(m)).

The Plant Board is required to “maintain traceability of the state standards to the national standards in the possession of the [NIST]”. Ark. Code Ann. § 4-18-312(a). The rulemaking process set forth in the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq., has made the process difficult to update standards in a timely fashion. The result is a state of perpetual rulemaking that consumes Department resources.