

Agriculture states there is at least one on-board weighing system for semi-trailer use (Weigh-Tronix, model STS-50, 50,000 times 20 pounds) that has a certificate of compliance on the market today.

The Idaho Department of Agriculture is concerned that non-commercial type on-board weighing systems are being used. It is also concerned that manufacturers are using this rulemaking to try to circumvent the National Type Evaluation Program of the NIST requirements being met by other scale manufacturers. The Idaho Department of Agriculture encourages Air-Weigh and Hi-Tech Scale to work to get their products approved through the National Type Evaluation Program system.

The Idaho Department of Agriculture notes that the National Conference on Weights and Measures along with NIST advisers have determined the requirements for commercial scales. The tolerances and performance requirements have been set to prevent either the buyer or seller from being damaged in transactions. These standards are recognized not only in every jurisdiction in this country but throughout the world. The Idaho Department of Agriculture urges FMCSA to ensure any rule change continues to require shipping and storage charges be determined on a commercial scale—whatever form that scale may be, a vehicle scale or on-board scale system.

The Michigan Department of Agriculture would not object to the non-commercial use of non-certified scales, provided they are clearly marked "Not Legal For Trade" and could thus be used for estimates only. Otherwise, the Michigan Department of Agriculture strongly supports maintaining the "certified scale" requirement for commercial sales.

The Handbook 44 serves the California Department of Agriculture as a uniform model governing performance, use, and testing of commercial weighing and measuring devices. The California Department of Agriculture urges FMCSA to retain a policy of requiring weights upon which charges are based to be determined on scales that have been tested and sealed by State weights and measures officials applying the requirements of Handbook 44. Companies who wish to offer weighing and measuring devices for use in determining charges for goods or services, should ensure that they comply with the uniform standards contained in Handbook 44, and should continue to be required by FMCSA to submit such devices to testing and

verification by weights and measures officials.

The Oregon Department of Agriculture requires that: (1) Any weighing or measuring device must be licensed, tested and approved by the Oregon Department of Agriculture Measurement Standards Division when the device is used commercially for the measurement of vehicles; and (2) any commercial weighing or measuring instrument or device must be issued a Certificate of Conformance traceable to NIST.

The New Hampshire Department of Agriculture believes that on-board scales are not in the best interest of shippers and competitors. The potential error of 200–300 pounds per axle group is unacceptable, as well as its "incorrect" status under Handbook 44.

The Colorado Department of Agriculture does not have a problem with on-board weighing. It believes any rules that are adopted must take into account the individual State requirements for commercial measuring devices. All states currently have requirements for commercial measuring devices that are rooted in years of experience. These requirements manifest themselves as Handbook 44.

The Colorado Department of Agriculture states that if FMCSA elects to allow the use of on-board weighing systems, it must (1) ensure that the system is as accurate as the certified scales that are currently used for shipping; and (2) ensure the on-board weighing system meets the same standards, with regard to specifications, as other commercial devices, *i.e.*, that it meets the criteria of Handbook 44. The Colorado Department of Agriculture believes that meeting Handbook 44 requirements will ensure that both the shipper and carrier are treated equally, and scale manufacturers can compete equitably.

AMSA urges us to acknowledge the advantages of advances in technology that have become available throughout the moving industry for the weighing of shipments. It asserts that the use of on-board scales promotes shipper satisfaction by producing immediate, on-site shipment weights without the need to follow a tractor-trailer to an available scale. It proposed adding new § 375.523, which it believes will protect shippers' rights by requiring that shippers observe the weighing procedure, and allow them to reject the results of the on-board weighing procedure and elect to have the shipment weighed on a traditional scale. The recommended provision would read as follows:

If a trailer is so equipped, at the shipper's option, shipment weight may be determined with an on-board trailer scale if the shipper observes the weighing of the trailer both before and after the loading of the shipment. If the shipper accepts the final weight determination, you must obtain a signed statement to that effect and retain it as part of the shipment file. If the shipper rejects the on-board scale weight determination, the shipment must be weighed on a certified motor vehicle scale in accordance with the requirements of § 375.509.

#### Response to Comments

FMCSA opposes the use of non-certified on-board trailer scales. The comments show they are not in the best interest of shippers. On-board weighing has the potential for manipulation of actual weight. While we acknowledge there may be advantages to using new technology for the weighing of shipments, AMSA and its device manufacturer have not produced evidence that its system is compliant with Handbook 44.

FMCSA believes the issue of on-board trailer scales should be discussed in a separate and specific rulemaking. We believe the moving industry must work with the NIST and the States before asking us to allow their use. The NIST is the government agency responsible for promoting uniformity in United States weights and measures laws, regulations, and standards. The NIST regulations achieve equity between buyers and sellers in the marketplace and enhance shipper confidence in the marketplace. FMCSA does not have this expertise and will defer to the NIST for its opinions in this matter. The NIST does not want FMCSA approving a device that may set non-uniform weight regulations and may achieve inequality between buyers and sellers in the marketplace and degrade shipper confidence in the marketplace.

The moving industry may also want the NIST to research the issue as allowed by 15 CFR 200.101 *Measurement research*. The NIST provides basic research and development activities aimed at meeting broad general needs. The NIST may also undertake investigations or developments to meet specialized physical measurement problems of an industrial group using funds supplied by the requesting organization.

AMSA has not indicated how it will safeguard shippers' rights other than requiring that shippers observe the on-board weighing procedure and permitting them to reject the results of this procedure. The comments by the weighing industry and State regulatory agencies suggest that AMSA's methods and device may provide false weights.