

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:5-1-06
Rule Type: Amendment
Rule Title/Tagline: What constitutes mislabeled fertilizer.
Agency Name: Department of Agriculture
Division: Plant Industry
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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 9/10/2018
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 905.44
5. **What statute(s) does the rule implement or amplify?** 905.35, 905.43, 905.44
6. **What are the reasons for proposing the rule?**

This rule is up for five year rule review.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rules in chapter 901:5-1 of the Ohio Administrative Code regulate the labeling, weighing, manufacturing and distributing of fertilizer in the state of Ohio. The rules ensure that individuals seeking to purchase fertilizer have the consumer confidence to expect that the product they seek to purchase meets their expectations.

OAC 901:5-1-06 outlines what constitutes mislabeled fertilizer. The rule establishes percent allowances that the percent guaranteed may be off by. These allowances are in conformance with the American Plant Food Control Officials. The rule is being amended to add the table of allowances into the rule.

8. **Does the rule incorporate material by reference? No**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Pursuant to ORC 905.32, no person shall manufacture or distribute in this state any type of fertilizer until a license to manufacture or distribute has been obtained by the manufacturer or distributor from the department of agriculture. Manufacturers and distributors must pay a licensing fee and submit an application. The licensee fee for manufacturers and distributors is set by statute at five dollars. There is minimal time for compliance in submitting the application.

Manufacturers and distributors of fertilizer are required to list percentages guaranteed of elements within their product. This is accomplished either through product testing

or mathematic calculations. Most manufacturers and distributors do not perform additional testing on their product. Rather, manufacturers rely on the ingredients added to their product to calculate the percentage guaranteed for each element. Many manufacturers include the cost of labeling into the design of their product packaging.

Additionally, their products must bear particular labels. Product which is outside the percent allowances listed in rule OAC 901:5-1-06 may be subject to either re-labeling or re-formulation of their product. The quantified impact on these changes can be as little as ten cents per package as a new label is required. Re-formulating the product requires more work and therefore more cost; however, these costs depend on the product, the variance, and the methods of reformulation.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **Does this rule have an adverse impact on business?** Yes
 - A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** Yes

Pursuant to ORC 905.32, no person shall manufacture or distribute in this state any type of fertilizer until a license to manufacture or distribute has been obtained by the manufacturer or distributor from the department of agriculture. Manufacturers and distributors must pay a licensing fee and submit an application. The licensee fee for manufacturers and distributors is set by statute at five dollars. There is minimal time for compliance in submitting the application.

- B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?** Yes

Should any product be outside the manufacturer's or distributor's guarantee they will either be required to re-label or re-formulate the product. The quantified impact on these changes can be as little as ten cents per package as a new label is required. Re-formulating the product requires more work

and therefore more cost; however, these costs depend on the product, the variance, and the methods of reformulation.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? No**