

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture_____

Regulation/Package Title: Fertilizer FYR Spring 2013_____

Rule Number(s): 901:5-1-01 to 06; 901:5-2-02, 05, 06, 08, and 09; 901:5-3-01 to 14,
excluding 04; and 901:5-5-01 to 04._____

Date: 4/3/2013

Rule Type:

☐ New

☐ Amended

☒ 5-Year Review

☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

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.

This rule package encompasses several areas of fertilizer regulation overseen by the Department. The first chapter is all rules 901:5-1, Fertilizer. This chapter sets standards for labeling fertilizers, including the sale of bulk fertilizer.

The five rules reviewed in 901:5-2, Fertilizer Storage and Handling, regulate the storage and operations of storage units of liquid fertilizer in amounts exceeding five thousand gallons at any one location. 901:5-2-02 requires that all storage facilities and vessels meet design requirements as set forth in other rules. 901:5-2-05 and 06 regulate the operations of storage facilities and set forth procedures for discharges at the facility. 901:5-2-08 sets forth lesser requirements for the storage of dry fertilizer due to its safer nature. 901:5-2-09 sets standards for liquid fertilizer storage vessels that were constructed on site prior to the time the rule was initially adopted; these facilities must meet certain safety standards and continue to be inspected.

Chapter 901:5-3 regulates anhydrous ammonia systems being used for agricultural purposes only. All rules in this chapter, except 04, are being reviewed and renewed in this package. The rules in this chapter regulate the design specifications of ammonia systems, including piping and safety equipment. The rules also regulate the methods of transfer to systems and the use of mobile systems on farm equipment.

Chapter 901:5-5 regulates the content and sampling of agricultural liming products.

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

901:5-1: R.C. 905.40.

901:5-2: R.C. 905.44 (as effective after 3/27/2013)

901:5-3: R.C. 905.40 (as effective after 3/37/2013)

901:5-5: R.C. 905.61

A note on R.C. 905.40 and 905.44: R.C. 905.40 was changed three times during the 129th General Assembly, resulting in changes to where the statutory authority for regulating anhydrous ammonia and fertilizer were located within the Revised Code. As of the effective date of the final change, 3/27/2013, the authority for the rules in this package will be the same as it has been in previous years but located under new sections. This change will be reflected in the filings with LSC.

- 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.

- 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 is authorized to promulgate these rules to ensure safety for the environment and citizens of Ohio when storing and handling fertilizers and anhydrous ammonia in Ohio.

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

By keeping track of the number of reported fertilizer releases and damages associated with them and complaints from the industry.

Development of the Regulation

- 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 rules regulating fertilizer storage and handling and ammonia systems are based on several industry standards; including model rules created by the American Association of Plant Food Control Officers (AAPFCO), the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), and working members of the agricultural industry. The Department is in continual contact with the regulated community and updates the standards in the rules for fertilizer and ammonia when warranted.

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

See answer to question 7.

- 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?**

See answer to question 7.

- 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 primary purpose of the rules in this package is the protection of the fertilizer and ammonia user and the general public, as a result the rules are a minimum safety standard and alternatives are not appropriate. However, in many instances the regulated entities have adopted more stringent standards to ensure profitability and safety for their own employees.

- 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.**

These are performance based as they allow stakeholders to determine how they are going to comply with the rules.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The use, transport and storage of fertilizer and ammonia can cross several regulatory jurisdictions. ODA uses open communication lines and cooperation with OEPA, ODNR and ODOC to ensure that each agency regulates only the specific area it has been granted statutory authority to act in.

- 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.**

Continue to conduct routine and complaint initiated investigations and provide outreach and compliance assistance.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**

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

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.*

a. Fertilizer Retailers/Distributors and Farmers

b. The Department can refuse, suspend, or revoke an existing registration or license for failing to comply with these rules.

c. Those persons wishing to market fertilizer or build systems for the storage of bulk fertilizer or anhydrous ammonia for agricultural use must follow the design, maintenance, inspection, and marking requirements contained in the rules in this package. This will add some periodic maintenance costs to replace worn parts or reapply markings. However, the standards for building both the fertilizer and ammonia systems in these rules are industry standard and a new system would not be built purposely to lower standards even in the absence of these rules. The Department’s role in regulating is to prevent accidental substandard work.

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

The value of properly built and maintained fertilizer and ammonia systems far outweighs the any extra cost associated with such techniques. Accidental releases of these materials can harm the environment and people. Anhydrous ammonia in particular can be deadly with only slight exposure and can be blown by winds across large areas. The state and the industry have an interest in insuring accidents caused by faulty equipment or improper labeling never occur.

Additionally, the proper labeling of fertilizer and liming materials is a consumer protection issue that reaches all parts of the agriculture industry. Proper labeling of these products insures that farmers are able to produce their products in an efficient and cost-effective manner.

Regulatory Flexibility

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

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No, whether they are a small business or a large business if they meet the definitions that require compliance then there are no exemptions.

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?

The Department, as a matter of policy, does not impose fines or penalties for paperwork violations and first-time offenders.

18. What resources are available to assist small businesses with compliance of the regulation?

Inspectors and Supervisors will help them determine what they need to do during routine inspections or phone calls.