

**MEMORANDUM**

**TO:** David Miran, Ohio Department of Agriculture

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** September 4, 2018

**RE:** **CSI Review – Plant Health – Fertilizer (OAC 901:5-1-01 through 901:5-1-06)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of five amended<sup>1</sup> rules and one rescinded rule proposed by the Ohio Department of Agriculture (ODA) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on April 27, 2018 and the public comment period was held open through May 18, 2018. No comments were received during the CSI public comment period.

The rules in this package set forth the requirements for the production and distribution of fertilizer in Ohio. Ohio Administrative Code (OAC) 901:5-1-01 sets forth that fertilizer shall be labeled according to the standards of the Association of American Plant Food Control Officials (AAPFCO). The rule is amended to clarify the language and include nickel as an element to be listed on labels. OAC 901:5-1-02 sets forth the definitions used in the Chapter and is being amended to include all definitions found in ORC 905.31 and the official publication of AAPFCO.

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<sup>1</sup> OAC 901:5-1-02 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

OAC 901:5-1-03 sets forth definitions for fertilizer mixtures. The rule is being proposed for rescission, as the contents of the rule are being included in the amendments to OAC 901:5-1-02. OAC 901:5-1-04 regulates the sale of fertilizer from bulk storage facilities and establishes that bulk storage facilities must display, label, and maintain records of sales of fertilizer. The rule is being amended to clarify the requirements. OAC 901:5-1-05 establishes the process by which fertilizer may be distributed by weight and is being amended to clarify that fertilizer distributed by weight shall be measured by volume. OAC 901:5-1-06 details the mislabeling of fertilizer and is amended to include a table of percent allowances for nitrogen, phosphoric acid, and soluble potash.

During early stakeholder outreach, ODA sent the rules to relevant stakeholders for comment, including professional associations, industry organizations, and government agencies. ODA received no comments during this time or during the CSI public comment period.

The business community impacted by these rules includes all fertilizer manufacturers and distributors in the state. The adverse impacts created by the rules include license fees and the cost of relabeling or reformulating fertilizer units that are outside guaranteed standards. License fees cost \$5 annually. ODA estimates that relabeling fertilizer costs approximately \$0.10 per package. Costs for reformulating fertilizer can be difficult to assess, since the type of product can vary. After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Agriculture should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.