

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Agricultural Lime

Rule Number(s): 901:5-5-(01-04)

Date: May 14, 2018

**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☒ Rescinded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.

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## **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.*

The rules in chapter 901:5-5 of the Ohio Administrative Code regulate the sale of agricultural lime in the state of Ohio. The rules ensure that individuals seeking to purchase agricultural liming material have the consumer confidence to expect that the product they seek to purchase meets their expectations. The rules have been reviewed pursuant to a five year rule review and are being proposed as follows:

OAC 901:5-5-01 sets forth the definitions as used in the chapter. The rule is being amended to include a definition of “Director” or “Director of agriculture.”

OAC 901:5-5-02 states that agricultural liming material is mislabeled if the director of agriculture determines that the product is outside of the tolerance levels established in this rule. The rule is being amended to increase the tolerance level from one percent to five percent.

OAC 901:5-5-03 has been proposed to be rescinded. The existing rule set forth a requirement that ODA make at least two analyses of agricultural lime each year.

OAC 901:5-1-04 states that when samples are collected, samples must be taken which represents an average of all parts in a given lot. This rule is being amended to help with reader comprehension.

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

R.C. 905.61

### **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 goal of these regulations is to protect individuals who purchase agricultural lime in the state of Ohio. The requirement of percent guarantees for liming materials allows consumers

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to select the appropriate product for their situational needs. Without these guarantees consumers may be under or overapplying nutrients which can have a disparate impact on both their agricultural operations and the environment.

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

The Department inspects and investigates complaints regarding the agricultural lime industry. The rules are judged as being successful when inspections and investigations find few violations, when lime distributors are registered with the Department, and when there is no increase in the number of complaints filed with the Department.

**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.*

On March 28, 2018, the following stakeholders comprise a list of the leaders of several agricultural organizations found within the state of Ohio. Each stakeholder was given a copy of the rules contained in this package and asked to submit comments to the Department by April 17, 2018. The stakeholders contacted are as follows:

AmericanHort	Gina Zirkle
Ohio Aggregates & Industrial Minerals Assoc.	Patrick Jacomet
Ohio Agribusiness Assoc.	Chris Henney
Ohio Agribusiness Assoc.	Margo Long
Ohio Agribusiness Assoc.	Andrew Allman
Ohio Christmas Tree Assoc.	
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	John Torres
ODOT	Scott Lucas
ODOT	Terri Barnhart
Ohio Environmental Council	Adam Rissien
Ohio Environmental Council	Jack Shaner
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Larry Antosch
Ohio Farmers Union	Linda Borton
Ohio Farmers Union	Joe Logan

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Ohio Forestry Association	Michael Geary
Ohio Forestry Association	John Dorka
Ohio Lawn Care Association	Mark Bennett
Ohio Nursery Landscape Association	Roni Peterson
Ohio Nursery Landscape Association	Belinda Jones
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Council	Kirk Merritt
Ohio Pesticide Applicators for Responsible Regulation	Lonnie Alonso
Ohio Produce Growers Association	Valerie Graham
Ohio Pest Management Association	Melinda Howells
Ohio Pest Management Association	Brian Alonso
Ohio State Bee Keepers	Tim Arbeit
Ohio Turf Association	Brian Laurent
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Environmental Law & Policy Center	Madeline Fleisher
M. Bohlke Veneer	Manfred Bohlke
United States Department of Agriculture, APHIS PPQ	
Ohio State University, Extension Offices	
Ohio Department of Natural Resources, Division of Forestry	

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

The Department did not receive any comments.

**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?**

The American Plant Food Control Officials is an organization of fertilizer and lime control officials from each state in the United States, from Canada and from Puerto Rico who are actively engaged in the administration of fertilizer and lime laws and regulations; and, research workers employed by these governments who are engaged in any investigation concerning mixed fertilizers, fertilizer and lime materials, their effect, and/or their component parts. After years of research the scientific studies have shown that these regulations work and protect consumers from purchasing ineffective products.

**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?**

Based on the stakeholder responses, the Department did not consider any other regulatory alternatives.

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**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.*

As these rules are administrative in nature the rules are performance based as they define the regulatory outcome but do not dictate the process.

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

The Department is given sole regulatory authority over agricultural lime in R.C. 905.61.

**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.**

These rules are already implemented within the industry and the Department works with all lime manufacturers to educate and inform them on the regulations. Additional education and outreach will be performed with the affected communities of the changes by the Plant Health Division. The staff members of the Plant Health Division ensure that all agricultural lime manufacturers are treated in a similar manner.

**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;**

All agricultural liming material manufacturers and distributors operating within or selling into the state of Ohio.

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

Pursuant to ORC 905.53, no person shall manufacture or distribute in this state any liming material 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.

Manufacturers and distributors of liming material are required to meet the fineness requirements in ORC 905.54 and the labeling requirements in ORC 905.55. Further, as outlined in rule, all agricultural liming material must be within the listed tolerances. This is accomplished either through product testing or mathematic calculations. Additionally, their products must bear particular labels. Product which is

outside the percent allowances listed in rule OAC 901:5-5-02 may be subject to either re-labeling or re-formulation of their product.

**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.*

The licensee fee for manufacturers and distributors is set by statute at fifty dollars. There is minimal time for compliance in submitting the application.

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.

Finally, 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.

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

As the primary purpose of these rules is consumer confidence in purchasing a product that consumers can depend upon, exemptions for small businesses would not be applicable.

**Regulatory Flexibility**

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

As stated above, due to the basis of consumer confidence of the rule, different standards based on the size of the business would be inappropriate.

**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?**

If a manufacturer or distributor were to incorrectly fill out their licensing paperwork the Department would work with them to correct the paperwork.

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

These rules are already implemented within the industry and the Department works with all stakeholders in order to educate and inform them on the regulations.