

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Fertilizer

Rule Number(s): 901:5-1-(01-06)

Date: April 26, 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☒ Rescinded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 901:5-1 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. The rules have been reviewed pursuant to a five year rule review and are being proposed as follows:

OAC 901:5-1-01 sets for the labeling requirements for fertilizer. Specifically, the rule requires that all packages for fertilizer shall be labeled in accordance with the standards set forth by the American Plant Food Control Officials. Further, all fertilizer packages must clearly identified the percent guaranteed of particular elements contained within the fertilizer. The rule is being amended to make necessary clarifications as well as to allow Nickel (Ni) to be listed on the label.

OAC 901:5-1-02 has been proposed to be rescinded and replaced due to the Legislative Service Commission's Administrative Rule Drafting Manual. The new proposed rule adopts the definitions that are set out in both Ohio Revised Code section 905.31 and the definitions listed in the American Plant Food Control Officials 2017 official publication.

OAC 901:5-1-03 has been proposed to be rescinded. The existing rule outlined definitions for fertilizer mixtures. These definitions have been incorporated into OAC 901:5-1-02.

OAC 901:5-1-04 sets out the requirements for the sale of fertilizer from bulk storage facilities. The rule requires that bulk storage facilities label the fertilizer grades and areas where they are stored. The rule is being amended to make clarifying edits which should help with reader comprehension.

OAC 901:5-1-05 outlines the requirements for the weighing of fertilizer and the requirements for shipping invoices. The rule is being amended to change the term quantity by volume which should clear confusion.

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.

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

R.C. 905.44

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- 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 fertilizer in the state of Ohio. The requirement of percent guarantees for nutrients allows consumers 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 fertilizer industry. The rules are judged as being successful when inspections and investigations find few violations, when seed labelers 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.*

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. The stakeholders contacted are as follows:

AmericanHort  
Ohio Aggregates & Industrial Minerals Assoc.  
Ohio Agribusiness Assoc.

Gina Zirkle  
Patrick Jacomet  
Chris Henney

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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
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 Arheit
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 substantive comments. Mr. Chris Henney of the Ohio Agribusiness Association stated that he went over the rules with his stakeholder groups and there were no comments submitted.

**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 control officials from each state in the United States, from Canada and from Puerto Rico who are actively engaged in the administration of fertilizer laws and regulations; and, research workers employed by these governments who are engaged in any investigation concerning mixed fertilizers, fertilizer 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.

**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 to designate dangerously contagious or infectious diseases in R.C. 905.44.

**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 fertilizer 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 fertilizer 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 fertilizer 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 905.32, 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.

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. 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.

**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 five 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.**

Due to the health and safety nature 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?**

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