

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Plant Industry 5YR – Commercial Feeds

Rule Number(s): 901:5-7-12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, and 25

Date: April 23, 2014

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☒ Rescinded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.

The rules in this chapter amplify the statutory authority the Department has to inspect commercial animal feeds for adulteration and mislabeling. The rules regulate the naming and labeling of feed to ensure that feeds contain the products they claim and that no unsubstantiated claims as to the feed are made on the label. Further, the rules closely mirror the Association of American Feed Control Officials (AAFCO) which is a voluntary membership association of local, state and federal agencies charged by law to regulate the sale and distribution of animal feeds and animal drug remedies. The Department is taking this opportunity to remain consistent with the industry by updating many of the pet food rules.

Rule 901:5-7-01 sets for definitions as used in the section. It is being amended to add definitions of “pasteurization” and “raw milk.”

Rule 901:5-7-12 addresses the guaranteed analysis of commercial feed distributed in the state. The rule specifically requires that all feed shall state the specific animal class and species for which the feed is intended. It is being amended to make grammatical and stylistic changes in order to make the rule easier to read and understand. Further, the rule is being amended to more accurately mirror the regulations as set forth in 2014 “Official Publication” of AAFCO. The changes reflect the addition of minimum selenium in parts per million in the guaranteed analysis of several different animal feeds. Additionally, some restructuring of the rule has taken place to reflect the standard order of guaranteed analysis on the labels.

Rule 901:5-7-13 addresses the use of precautionary statements on the labeling of all commercial feed. This rule is being amended to include a precautionary statement for raw milk distributed as commercial feed.

Rule 901:5-7-14 sets forth specific substances which are considered “poisonous or deleterious” in commercial feed. This rule is being amended to make grammatical and stylistic changes in order to make the rule easier to read and understand. Further, the rule is being amended to correct spelling mistakes currently present within the rule.

Rule 901:5-7-15 addresses good manufacturing guidelines. It is being amended to comply with incorporation by reference rules to include the date of the applicable CFR section.

Rule 901:5-7-16 addresses the use and restriction of using animal waste products in animal feeds. The rule proscribes special labeling and warning in described circumstances. The rule is being amended to make grammatical and stylistic changes in order to make the rule easier to read and understand.

Rule 901:5-7-17 is being rescinded as more than fifty percent of the original rule is being amended. The new 901:5-7-17 is titled, “Label Format and Labeling of Pet Food and Specialty Pet Food.” The rule mirrors the AAFCO standards on the same subject. The rule sets forth the label requirements for all pet food and specialty pet food. It includes the information which must be present on the label as well as prohibitions of what cannot be represented on the label.

Rule 901:5-7-18 is being rescinded as more than fifty percent of the original rule is being amended. The new 901:5-7-18 regulates brand and product names for pet food and specialty pet food. It sets requirements for using claims when contained in the name of the food. The new rule closely mirrors AAFCO standards on the same subject.

Rule 901:5-7-19 is being rescinded as more than fifty percent of the original rule is being amended. The new rule outlines requirements for the guaranteed analysis which shall be listed on the label. The guaranteed analysis outlines the minimum percentage of protein, fat, fiber, etc. which are present within the food product. The rule also outlines the labeling of vitamins contained in the food product. The new rule closely mirrors AAFCO standards on the same subject.

Rule 901:5-7-20 is being rescinded as more than fifty percent of the original rule is being amended. The new 901:5-7-20 is titled, “Ingredients for Pet Food and Specialty Pet Food.” The rule sets forth requirements for ingredient labeling on pet food and specialty pet food packaging. The new rule closely mirrors AAFCO standards on the same subject.

Rule 901:5-7-21 is being rescinded. A new rule 901:5-27-21 has been proposed which regulates drug and food additives for pet food and specialty pet foods. The rule outlines requirements for labeling when a drug or additive is included in the product. The new rule closely mirrors AAFCO standards on the same subject.

Rule 901:5-7-23 is a new rule which outlines the nutritional adequacy requirements of pet food and specialty pet food. The rule regulates pet food and specialty pet foods that make claims regarding the nutritional adequacy of their product. It requires that the product meet

nutrient requirements in order to make claims of adequacy. The new rule closely mirrors AAFCO standards on the same subject.

Rule 901:5-7-24 is a new rule which requires feeding directions on all pet food and specialty pet food products. The rule includes statements which shall be listed on the packaging. At a minimum, the rule requires that the portion size and feeding frequency be present on the label. The new rule closely mirrors AAFCO standards on the same subject.

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

R.C. 923.50

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.

Yes. Rule 901:5-7-13 implements label requirements as found in the Federal Fair Labeling and Packaging Act. This act requires precautionary labels to be of a size in ratio to the package itself.

This regulation is not being adopted or amended to enable the state to obtain approval to administer or enforce a federal law or to participate in a federal program.

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 statutorily tasked under Chapter 923 with protecting the commercial feed supply and the health and safety of animals and humans. These rules provide quality assurance and truth-in-labeling to the Ohio consumer.

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 commercial feed industry. The rules are judged as being successful when inspections and investigations find few violations, when feeds 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

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stakeholders were initially contacted.

The rules are based in part on the AAFCO model rules. This is an organization of local, state and federal agencies charged by law to regulate the sale and distribution of animal feeds and animal drug remedies. AAFCO works with industry representation to protect consumer and animal health, and provide a level playing field for the industry as a whole.

Additionally, the Department reached out to the Grain and Feed Task Force of the Ohio Agribusiness Association. This Association is made of manufacturers and wholesale/retail suppliers of plant nutrient and protection materials, members of the grain warehousing and marketing industry, the feed and seed industry, as well as companies providing equipment, financing, insurance, consulting, and other products and services for the agribusiness industry. The current composition of this committee is:

Robert Linkhorn - Limaco Inc.
Kim Behr - Trupointe Cooperative, Inc.
Rhoda Crown - Coshocton Grain Company
Greg Garman - Garman Feed Supply Inc.
Jeff Goetz - The Andersons, Inc.
John Heinz - Sabina Farmers Exchange, Inc. (Premier Feeds)
Kelly Hyde - Western Reserve Farm Cooperative
Kenneth Jewell - ASE Feed & Supply, LLC
Brad Johnson - Kalmbach Feeds
David McIntosh - Heritage Cooperative, Inc.
Drew Mennel - The Mennel Milling Co.
Jerry Meyer - Cargill
Scott Thibaut - Consolidated Grain & Barge, Inc.
Todd Wise - Gerber & Sons, Inc.

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

The rules have remained relatively unchanged since their inception in 1995. The revisions to the pet feed regulations found in 901:5-7-17 to 21, 23, and 24 are the result of an overhaul in the pet food standards as adopted by AAFCO. Members of the Grain and Feed Task Force, when reached for comment on the rule, were supportive of the change to mirror the AAFCO standards.

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?

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These rules are based on the standards from the Association of American Feed Control Officials (AAFCO) which utilizes years of scientific research on the nutrition and health of animals in developing rules. The rules are based on standards from the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) wherever applicable.

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 department is statutorily tasked with regulating commercial feeds in order to provide a reliable and trustworthy marketplace for the Ohio consumer. The standards that are contained in this rule are based on scientific research and in most cases are nationally accepted. Stakeholder participation in this rule package has indicated to the Department that this is the best regulatory scheme at this time. For those reasons, no other regulatory alternatives were considered.

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 regulations as the products need only be labeled accurately and not adulterated from what the label states is in the product.

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

The Department has sole regulatory authority for commercial animal feeds in Ohio.

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 registered feed manufacturers and distributors to educate and inform them on the requirements of labeling regulations. Additional education and outreach will be performed with the affected communities of the changes by the Commercial Feed Division. The staff members of the Commercial Feed Division ensure that all permit holders in Ohio 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:

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a. Identify the scope of the impacted business community;

All commercial animal feed manufacturers and distributors in Ohio.

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

As the rules are currently implemented, all companies that manufacture, ships into, or distributes commercial animal feed within the state must register with the Department. There is no monetary cost for the application or registration. There is negligible time for compliance with the application process.

Manufacturers must also apply labels to all of their products indicating the contents of the feeds. In order to do so, the manufacturers submit their product to testing which produces an analysis of the biological and chemical makeup of their product. This test only needs to be completed once, so long as the product remains the same. The cost for this analysis is on average around \$60. Labeling costs vary and usually depend on the design and marketing decisions of the manufacturer. Manufacturer's can satisfy the labeling requirements of these rules with a simple computer generated label which usually costs fewer than ten cents.

Manufacturers or distributors who do not comply with labeling regulations can be subject to having their product seized and may potentially be charged with a misdemeanor. Finally, manufacturers must submit semi-annual reports of their sales. These tonnage reports indicate to the Department how many tons of feed they have sold in the past six months.

As already implemented, these rules provide that failure to comply with the rules and regulations of the chapter may result in the product being withdrawn from distribution until the manufacturer is in compliance. The amendments to the rules do not require any additional fees, fines, or time for employer compliance and should not have any additional adverse impact upon any manufacturers.

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 adverse impacts of this labeling regulation are negligible, as labels need only be drafted once for printing on every label of a particular product. Additionally, labels are usually reviewed prior to the printing of packaging and any mistakes or

corrections can be made with little or no cost to the manufacturer or distributor.

If the manufacturer fails to submit their labels to the Department for review prior to printing this may result in unexpected costs. Even in cases of misprinted labels, stickers can be printed and affixed to cover the incorrect label; or when the mistake is being corrected for the next run of a product the mislabeled product is allowed to be sold as-is.

For every ton reported sold in the past six months, the manufacturers shall pay twenty-five cents. There is a 100 ton minimum every report. This results in a \$25 minimum semi-annual payment to the Department.

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

The minimal impact of proper labeling of products outweighs the risk to the animals that could be malnourished or sickened if feeds are mislabeled or adulterated. Label requirements ensure that feed is safe and effective for use. Consumer confidence and knowledge that the feed is regulated for animal and consumer safety helps to protect the industry as a whole. In an unregulated industry, deceptive practices of a few will hurt consumer confidence in the industry. Therefore, the adverse impact is considered to be justified.

Regulatory Flexibility

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

As the primary purpose of these rules is public safety and animal health, exemptions for a smaller operator would not be applicable.

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?

Due to the public health implications of an improperly labeled feed product the Department does not waive penalties for first-time offenders. The penalty for a mislabeled product is prohibiting the sale and distribution of the product. Usually, violations are corrected by simply applying a corrected sticker to the product.

In the case of failure to submit their tonnage fees, the Department usually provides the offender significant opportunity to come into compliance prior to withdrawing their registration.

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

The Department has online resources and has field staff available through a 24 hour helpline to provide assistance. Training and seminars are also available.