



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

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## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

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Regulation/Package Title (a general description of the rules' substantive content):

Plant Health- Fertilizer

Rule Number(s): 901:5-1-01, 02, 04, 05 and 06

Date of Submission for CSI Review: 12/6/2024

Public Comment Period End Date: 12/30/2024

**Rule Type/Number of Rules:**

New/     rules

No Change/   4   rules (FYR? yes)

Amended/   1   rules (FYR? yes)

Rescinded/     rules (FYR?    )

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **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 identify the percent guaranteed of particular elements contained within the fertilizer. The rule is being proposed with no changes made.

**OAC 901:5-1-02** This 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 2024 official publication. The rule has been amended to update the effective date of the American Plant Food Control Officials from 2017 to 2024.

**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 proposed with no changes made.

**OAC 901:5-1-05** outlines the requirements for the weighing of fertilizer and the requirements for shipping invoices. The rule is being proposed with no changes made.

**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 proposed with no changes made.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

O.R.C. 905.31, 905.35, 905.43, 905.44

- 4. 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

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable

- 6. 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.

- 7. 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, and when there is no increase in the number of complaints filed with the Department.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No

### **Development of the Regulation**

**9. 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 were contacted via email on October 25, 2024, for a public comment period which remained open until November 8, 2024.

AmericanHort	Meagan Nace
AmericanHort	Craig Regelbrugge
Buckeye Quality Beef Association	David Hyde
Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
Ice Miller	Samuel Porter
Nation Farmers Organization	Alva Heiss
Nation Farmers Organization	Tony Bensman
Nation Farmers Organization	Bill Stachler
NPMA SPAR	Kurt Scherzinger
Ohio Ag Council	Janice Welsheimer
Ohio Aggregates & Industrial Minerals	Patrick Jacomet
Ohio Agribusiness Assoc.	Aaron Heilers
Ohio Agribusiness Assoc.	Janice Welsheimer
Ohio Agribusiness Assoc.	Lauren Prettyman
Ohio Agribusiness Assoc.	Melinda Witten
Ohio Association of Meat Processors	Valerie Parks Graham
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Christmas Tree Association	Valerie Graham
Ohio Christmas Tree Association	Roger Koch
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	Kimberly Shriver
Ohio Corn & Wheat Growers Assoc.	Luke Crumley
Ohio Dairy Producers	Scott Higgins
Ohio Environmental Council	Trent Dougherty
Ohio Environmental Council (OEC)	Pete Bucher
Ohio Environmental Council (OEC)	Chris Tavenor
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farm Bureau	Jordan Hoewischer
Ohio Farmers Union	Joe Logan

Ohio Forestry Association	Jenna Reese
Ohio State Grange	Mike Russell
Ohio Green Industry Association	Tracy Schiefferle
Ohio Green Industry Association	Roni Peterson
Ohio Invasive Plants Council	Jennifer Windus
Ohio Invasive Plants Council	Gary Conley
Ohio Lawn Care Association	Mark Bennett
Ohio P.L.A.N.T.	Tony Seegars
Ohio Pest Management Association	Melinda Howells
Ohio Pest Management Association	Molly Mash
Ohio Pork Producers Council	Cheryl Day
Ohio Poultry Association	Jim Chakeres
Ohio Produce Growers & Marketers	Valerie Graham
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Association	Brandon Kern
Ohio Soybean Council	Kirk Merritt
Ohio State Beekeepers Assoc. (OSBA)	Jamie Walters
Ohio State grange	Mike Russell
Ohio State University	Adam Ward
Ohio Turfgrass Foundation	Troy Judy
Ohio Turfgrass Foundation	Mark Bennett
The Nature Conservancy	Jessica D'Ambrosio
The Nature Conservancy	Bill Stanley
The Ohio State University	Peggy Hall
Plant Health- Invasive Plant Advisory Board	Dr. Theresa Culley
Plant Health- Invasive Plant Advisory Board	Thomas Macy
Plant Health- Invasive Plant Advisory Board	Kyle Natorp
Plant Health- Invasive Plant Advisory Board	Matthew Lamoreaux

**10. 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 stakeholder comments during the open comment period.

**11. 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.

- 12. 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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply*

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

- 13. 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 governing the labeling, storage, handling and weighing of fertilizer in O.R.C. 905.42, 905.43 and 905.44.

- 14. 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**

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**

All fertilizer manufacturers and distributors operating within or selling into the state of Ohio.

- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

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. 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.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

No

- 17. 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**

- 18. 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.

- 19. 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?**

There are no penalties for paperwork violations. If a manufacturer or distributor were to incorrectly fill out their licensing paperwork the Department would work with them to correct the paperwork.

- 20. 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.