

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Agriculture and Rural Development

Bureau name:

Pesticide and Plant Pest Management Division

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2021-69 AC

Title of proposed rule set:

Regulation no. 634. Commercial fertilizers

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no current comparable federal rules or standards set regarding the proposed rules. Standards are set by the Association of American Plant Food Control Officials (AAPFCO). This organization is 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. Adopting this language will help bring the current rules up to date with similar provisions in other states. The application of fertilizer is a highly regulated activity due to the potential risks to the environment and human health from the higher minimum guarantees of elements. The proposed rules set by national standards reduces the potential risks overall creating a healthier ecosystem.

A. Are these rules required by state law or federal mandate?

There is no federal mandate for the proposed rules. Though not required, the proposed rules will implement the current AAPFCO standards from the 2020 AAPFCO Official Publication, Rules and Regulations Section Page 49 pertaining to the minimum level of micronutrients. Reporting of inspection fees are different amongst many states and decided upon individually. This proposal has been vetted amongst the fertilizer industry in this state which is in support of these changes.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed a federal standard; however, the rules will allow the State of Michigan to align with current standards set by AAPFCO. The subsequent decrease in fertilizer usage and cost of tonnage reporting as a result of the proposed rule change benefits the public's health, farmers, and the environment. The proposed rule change will benefit farmers and the industry by reducing the cost of tonnage reporting and decreasing the amount of fertilizer used. Both the public and environment will also see substantial benefits due to that decrease in fertilizer usage.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The fertilizer standards for the proposed rules will conform to the AAPFCO standards, which most states including the Great Lakes region have adopted. The proposed rule for once-a-year tonnage reporting will make Michigan the only state with this standard. There is no set standard regarding tonnage reporting which makes it an area where states have flexibility to tailor the programs to meet state's needs.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The minimum guaranteed standards do not deviate from the other Great Lake states. The tonnage standard creates a more efficient reporting process and reduces costs on reporting for both the industry and the state. Approximately 1,400 hours per year is logged by departmental technicians to process tonnage reports. By reducing to once per year, this number will be reduced by half resulting in thousands of dollars of savings for employee's time to process these reports. This should have the same effect on the industry's administrative costs to complete these reports.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The department has not identified any laws or rules that duplicate or overlap since commercial fertilizer is a highly specialized niche. The regulations with commercial fertilizer are important but are a small, specialized area that is not directed at individual consumers.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The AAPFCO has set the current standards this rule aims to adopt which allows Michigan's coordination with national standards. This regulation of commercial fertilizers is well established and is the only source of regulation since there is no federal law. There can be no duplication of local laws since local ordinances for commercial fertilizers are largely preempted under Act 451 of 1994 Section 324.8517.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

Since there is no federally mandated standard, a statement of specific facts is not necessary. The lack of federal standards allows states the flexibility to regulate commercial fertilizer to a state's specific needs. The proposed rules are necessary to protect the people and environment of Michigan from over fertilization and to reduce the burdens of tonnage reporting.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

There is no applicable federal standard, but there is a national standard that these proposed rules will finally catch up to after no regulation update for 42 years.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The update of the minimum guarantee allows for precision agriculture. New lab methodologies developed by chemistry permits a larger amount of plant uptake from a minimum, which creates less fertilizer waste and runoff. The specific plant tolerances of elements can be more precise. The tonnage reporting creates a more level playing field in the industry. The update saves costs for the government and the people by building up regulatory efficiencies and alleviating the burden of reporting during the busy agricultural season. Thus, the departments can track and audit firms more efficiently while farmers can focus on their crops.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The application of fertilizers is not expected to change, however, the industry can make changes to the labels to better reflect the minimum guarantees of nutrients within the product. Therefore, the application of the product can provide the necessary amount of nutrients in respects to the crop's uptake of nutrients; amounting in less waste of fertilizer overall.

The tonnage reporting will go from twice a year to only once a year. Moving to one reporting period per year in the winter months allows for reporting during the Michigan crop production offseason and allow stakeholders to focus on providing services to their consumers that use fertilizer during the peak growing season.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The current provisions have a higher amount for minimum guarantees; the new proposed rules allow for a lower amount of minimum guarantees which may result in less fertilizer being applied to crops, resulting in less surface runoff of nutrients. The current practice in reporting tonnage is twice a year and the desired practice will be once a year to ease administrative burdens. The proposed change to once per year will occur in the winter when fertilizer used in Michigan is at a minimum.

C. What is the desired outcome?

The desired outcome is that precise minimum guarantees will allow for less fertilizer being needed and applied, and to streamline reporting for the industry and the State.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The proposed rule will result in no harm; however, in the absence of approving this rule, Michigan standards will continue to operate at 42 years old. In addition, changing tonnage reporting to once a year will result in no harm, but leaving the current standard will continue to be a burden.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The rationale for changing the rules is to be updated to the current national standards set by AAPFCO and reduce the burden of reporting tonnage twice a year.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The minimum guarantee allows for less fertilizer runoff which helps protect the health and safety of Michigan citizens while also protecting the environment. The yearly tonnage reporting is less burdensome on government and farmers, increasing the financial welfare of each party.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The entire regulation was reviewed, and no other rules or updates are needed at this time. Lab methodologies are constantly evolving allowing for new bio-stimulants to be discovered, resulting in possible changes to standards in the future. Formally Rules 1 and 2 were separate, but with the new technology Rule 2 can be merged with the updates to Rule 1.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The department estimates there will be no additional costs. Tonnage reporting changing to once a year will free up time for staff, so their duties will shift to other important tasks. Scaling back reporting requirements will allow staff to focus on higher priority work, to increase accuracy, and to level the playing field with all in and out of state firms. The update creates a more complete auditing process.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made or is needed.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary to reduce runoff of fertilizer and acquire more accurate data on tonnage reporting. The rules reduce the burdens on fiscal administration while only affecting businesses not individuals.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The rules are still reasonable since they are only affecting businesses and there is no additional impact on individuals. In addition, the rules help reduce the costs and ease the burdens on farmers.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

Tonnage reporting is based on amount, therefore there will be no increase or decrease in revenue since the amount of tonnage is not changing, just the frequency of reporting.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The rules impact the department and the farmers, and any local rules are preempted; therefore, there are no additional responsibilities imposed on any city, county, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

Governmental units will have less reporting requirements since the tonnage reporting will only be once a year and thus can focus on other equally important tasks.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There are no additional expenditures for state and local governmental units. The rule does not require additional funding or appropriations.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The rule will have an impact on rural areas because the utilization of fertilizer is inherently tied to production, a significant amount of which occurs in rural areas. The application of the rules will decrease the amount of fertilizer used due to the target precision requirement. The new standard creates a system using less fertilizer through target precision allowing for a better application to plants and less of an environmental impact.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

In addition to farmers being affected, the broader environment will be positively affected due to a decrease in fertilizer runoff. Decreasing runoff will positively affect a number of environmental features like groundwater, viability of other crops and native plant species, native animal population, and a host of others.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules will have a positive impact on the environment. The chemical threshold of prominent elements within fertilizer (nitrogen, phosphorus, potassium) are toxic to certain plants and crops. Lowering the minimum guarantee will allow for a more diverse market for fertilizer and create a broader niche for specialty crops. This provides better service for the consumers and a healthier environment with less fertilizer application and run off. The lower minimum standard guarantees will allow non-target application to be safer and reduce the nutrient load of the affected area overall. The lower minimum guarantees benefit hydroponics as those plants are able to thrive in such systems with minimal nutrient inputs compared to land/row crop farming. Furthermore, specialty crops (i.e. hydroponic raised vegetables) grown in greenhouse environments, should thrive better in such systems with the minimum amount of fertilizers needed to raise such crops. The yearly tonnage reporting will allow the department to focus on firms who do not accurately report tonnage. This can help the department get a more precise tonnage report and ultimately help the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

An exemption for small businesses was not considered because the proposed rules create a level playing field and the tonnage reporting is already scalable by how much is sold.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The nutrient guarantee provisions are specific standards in the marketplace that need to be applicable across all levels of sales, and aligns Michigan with national standards. Tonnage reporting has always been less of a burden on those businesses that have limited sales, and these proposed changes will further reduce the impacts to businesses of all sizes. There is no statutory threshold for further exemptions.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

Of the 778 firms reporting tonnage in Michigan, five firms report 20% or more of the total tonnage. For these five firms, changing the reporting requirements of tonnage from twice per year to once per year will allow them to spend their administrative time reporting tonnage during the traditional non-busy season and allow for their time during the peak season to be focused on selling and distributing fertilizer to their consumers.

A significant majority of fertilizer manufacturers licensed in Michigan are not small businesses. It is not anticipated that the small businesses within the fertilizer market (farmers, greenhouses, landscape and lawn firms, golf courses, gardeners, etc.) will be affected by these regulation changes.

The average farm size has steadily grown over the last 10 years where the number of farms has decreased. The United States Department of Agriculture find that nearly 65% of farms in Michigan today are made up of less than 100 acres (2017 study of farmlands and relative population). A rule like this will affect both the small and large-scale farms in the state. However, the disparity between the effects on the size of the farms are negligible. Where there are clearly more small-scale farms than large, that does not mean there is a stronger effect on the smaller farms. Each will be affected equally despite the massive gap in proportionate size.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rule eases the tonnage reporting frequency which in turn helps all those required to report, but especially small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

As stated above, the reporting requirements are easier for small businesses now and there are no new steps required.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules help establish easier standards for tonnage reporting which replaces the twice a year requirement allowing sellers of fertilizers to focus on other things and the department to focus on verifying accuracy of reports.

This standard is a result of speaking with members of the farming and fertilizer industry as well as the Department's auditing function, all of whom agreed this would be a more efficient process.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules do not create any disproportionate impact because it attempts to ease the reporting burdens for all businesses, regardless of size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

Yearly tonnage reporting will decrease administrative costs without having a detrimental impact on small businesses, but rather a positive one as stated above.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The costs on small businesses should be reduced slightly as the frequency of reporting will decrease. No new equipment, supplies, labor, or administrative costs will be necessary.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no new legal, consulting, or accounting services that small businesses will incur. Small businesses are not affected in complying with the proposed rules.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Businesses of any size will not incur increased costs.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Neither the agency nor small businesses will encounter additional costs so there is no relevant exemption or lesser standard. This proposal eases reporting requirements by all businesses selling commercial fertilizers. Reporting requirements were already scalable based on the volume sold.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Since there will be no additional costs to small businesses or those of any size, there is no exemption or lesser standard and therefore no public interest in creating a lesser standard. The reporting provisions were already scalable based on the volume sold. This also addresses the public's interest in the streamlining food production and environmental protection through better and more targeted use of commercial fertilizers.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The agency has spoken with the Michigan Agri-Business Association which represents businesses of all sizes and they are very supportive regarding these changes.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Michigan Agri-Business Association as the entity representing most of the businesses of varying size that are regulated through the Act and rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There will not be any extra statewide compliance costs; the Department expects this will reduce compliance costs.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The proposed rules benefits farmers by adjusting the nutrient guarantees so farmers can use less fertilizer and pay less in tonnage fees back to the retailer. There is no limit on usage but the rule requires specific details for nutrients present and the necessary awareness of what is being used.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on businesses; they will have to do the reporting only once per year instead of twice. The recordkeeping, accounting, and other tracking remains the same.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

No additional statewide compliance costs will be imposed on individuals.

A. How many and what category of individuals will be affected by the rules?

MDARD typically licenses 800 fertilizer manufacturers per year. Additionally, approximately 6,000 specialty fertilizer & soil conditioner products are registered in Michigan. All these licensees and registrants shouldn't be impacted overall with the minimum rule change because Michigan follows AAPFCO standards. This practice is followed to ease the burden on the fertilizer industry and changing label which can be different from state to state. Consumers are already purchasing products per AAPFCO standards, so they will not be affected either.

Regarding tonnage changes, only licensed sellers/distributors are affected and will save time/costs of person responsible for reporting tonnage from twice per year to once per year.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The impact is less fertilizer used which reduces the costs and impact on the environment.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

As previously mentioned, approximately 1,400 hours per year are logged by departmental technicians to process tonnage reports. By reducing to once per year, this number will be reduced by half resulting in thousands of dollars of savings for employee's time to process these reports. This should have the same effect on the industry's administrative costs to complete and submit these reports. The savings in staff time should allow departmental technicians to work on reporting delinquencies and correcting errors in the reports. Also, time savings will allow for better outreach to the industry to complete these reports properly and accurately.

With the proposed minimum guarantees, thousands of dollars overall should be saved for the industry and the consumer due to less micronutrients being added to meet the higher, minimum guarantees currently in the regulation.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary benefits are streamlining the tonnage reporting. This new yearly reporting allows for the department and farmers to directly benefit by decreasing cost and time devoted to the recording and auditing process. The secondary benefits are the positive impacts on the environment from precision agriculture and less runoff.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth. If any, the rule may spur additional expansion of current parties due to saved costs and allowing for more efficient use of fertilizer. As discussed above, awareness of the fertilizer and what nutrients are present will also allow for more diversification of plant species to be grown.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The proposed rules will not disproportionately affect individuals or businesses. Various parties that may be positively affected are farmers looking to be more financially viable due to a decrease in potential usage. There will also be a general public benefit from this plan as a decrease in fertilizer usage has positive environmental effects such as a healthier habitat for local species and more protection from surface and ground water.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Agency staff spoke to members of AAPFCO, looked to other state standards to update Michigan's own regulations, and engaged with Michigan's Agri-Business Association. Each of these sources provided ample information that was used to tailor the proposed rule to the needs of Michigan's constituents.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The estimates were made after reviewing information produced from the many years this program has been running, reviewing and revising Michigan's standards to other state's benchmarks, and verifying the potential impacts with industry members.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

As of right now, there are no other reasonable alternatives to the proposed rules that will achieve the goals listed. The regulations have not been updated since 1979 and require an update to stay current with the national standards.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

No statutory amendments are needed.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

If the private market-based system was allowed to establish a regulatory program, the result would not level the playing field resulting in a disparity with in and out of state firms and small and large businesses.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The rules have been in place for decades and have not been changed since at least 1979. After internal discussions, discussions with state regulatory counterparts in other states, and with industry representing commercial fertilizer sellers and users in Michigan, the department recognized that we are past due to update the standards for the reasons outlined above, and that reporting once per year would be more efficient for both industry and the department.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

www.michigan.gov/mdard-fertilizer. This website has links to instructions for reporting tonnage as well as the application, application instructions for filing for a license, product registration and or laws and regulations pertaining to the program.