

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter ATCP 40, Fertilizer and Related Products

3. Subject

Fertilizer Content Deficiencies

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115 (7)(r)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

After convening a group of representatives of the fertilizer industry and agrichemical associations, and reviewing recent data concerning the wholesale prices of primary nutrients, the group concluded that the existing rule contains an outdated formula for the economic value of fertilizer. That formula was based on average wholesale prices of primary plant nutrients prior to its enactment in the 1970s.

This rule will do the following:

1. Replace the term "economic value" with "combined nutrient index" wherever it appears in s. ATCP 40.14, Wis. Admin. Code. The proposed new term represents a more accurate description of the index used in developing the multipliers within the formula.

2. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} +
{[available phosphate (P₂O₅) guarantee] x 2} + {soluble potash (K₂O)
guarantee}

to

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Amended formula: Combined Nutrient Index = {total nitrogen (N) guarantee}
+ {available phosphate (P₂O₅) guarantee} + {soluble potash (K₂O) guarantee}

The amended formula more accurately reflects the value of fertilizer ingredients sold in the marketplace than the current formula, which was developed over forty years ago.

3. The proposed rule changes the standard in s. ATCP 40.14 (1) (c), Wis. Admin. Code, for the economic value (proposed combined nutrient index) formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department's prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. A hearing was held in which additional representatives voiced support for the rule change and suggested an additional lower threshold of variance for bagged fertilizer materials.

11. Identify the local governmental units that participated in the development of this EIA.

None. No impact on local governmental units is anticipated.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will positively impact fertilizer manufacturers and distributors. There are approximately 700 Wisconsin businesses licensed to manufacture or distribute fertilizers, including farm centers and cooperatives. This rule will allow for a variance from the label guarantee that is based on current relative market values of primary nutrients, rather than the relative market values of primary nutrients during the 1970s. The anticipated impact is that a lower percentage of fertilizer products tested by the department will be considered "mislabeled" because the formula has been adjusted to account for updated nutrient prices. This rule will continue to benefit farmers by preventing deceptive sales practices due to mislabeled fertilizer. No implementation or compliance costs are expected to be incurred by these businesses. Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole are not expected to be impacted economically by this rule.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Fertilizer manufacturer and distributor businesses will benefit from the alignment of the economic value formula with current fertilizer input costs. (See no. 12, above.) Additionally, farmers and other consumers of fertilizer would benefit from accurately labeled fertilizer products. If DATCP takes no action, the current rule will remain in effect. However, there will continue to be an outdated formula in use to determine the overall fertilizer content value, giving a weighted cost to plant nutrients that have since equalized in cost.

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14. Long Range Implications of Implementing the Rule

It is not anticipated that there will be any long-term implications in the implementation of this rule. The variances in overall fertilizer content values and the formula used in determining the economic index value of the fertilizer product will continue to protect fertilizer consumers from mislabeled fertilizer products. Additionally, DATCP will continue to conduct periodic wholesale price surveys in an effort to ensure that all multipliers used in the economic index value formula are comparable with current industry practices.

15. Compare With Approaches Being Used by Federal Government

Currently, the Federal Government has no significant oversight of fertilizer products.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO principles and have similar basic laws which benefit consumers, fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

Illinois

Illinois requirements look at the total combined value of the fertilizer as well as the value for each fertilizer ingredient, and the product is deficient if the actual amount is 97% or less than the guarantee for both the individual fertilizer ingredient and the total combined value.

Iowa

Iowa uses a combined nutrient index value (called relative value) which is determined based on a formula that is identical to the current Wisconsin requirements, with a formula of relative value equal to $2N + 2P + K$ and a 98% deficiency threshold allowed between the actual and guaranteed relative values.

Michigan

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the annual values per unit of each primary nutrient.

Minnesota

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

17. Contact Name

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18. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

No Implementation or Compliance Costs and no negative Fiscal Impact to Small Businesses are expected.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Information submitted on behalf of the various members in attendance at the listening session held on February 2, 2015, was used in determining the proposed rule changes. These members included representatives from the fertilizer manufacturer and distribution sectors, along with multiple industry association representatives. These industry associations are direct representatives for various businesses within the fertilizer sale/production/distribution sectors, up to thirty percent of whom are considered small businesses. The department also presented information gathered from the United States Department of Agriculture concerning statistics on fertilizer ingredient pricing and variations of pricing that has occurred throughout a number of years.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

The proposed changes would not affect any reporting, design, or operational standards that are currently being used for the manufacturing, distribution and sales of a fertilizer product.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

None. The Department does not anticipate that the rule change will create a need for any fertilizer businesses, regardless of size, to change their current practices.

5. Describe the Rule's Enforcement Provisions

The enforcement provisions within the current rule will not change.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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