

Rule Summary and Fiscal Analysis (Part A)**Department of Agriculture**

Agency Name

Soil and Water Conservation

Division

David E Miran

Contact

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901:13-1-06

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Flooding of animal feeding operations.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **HB64**General Assembly: **131**Sponsor: **Ryan Smith**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **939.02**5. Statute(s) the rule, as filed, amplifies or implements: **939.02**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Amended Substitute House Bill No. 64 of the 131st General Assembly became effective on June 30, 2015. A highlight of the bill was the transfer of the Agricultural Soil and Water Conservation Program from Ohio Department of Natural Resources (ODNR) to the Ohio Department of Agriculture (ODA). This transfer is set to take place on January 1, 2016. These rules are being adopted pursuant to that transfer.

As you are well aware, Chapter 119 of the Revised Code requires the Department to examine any adverse business impacts of the proposed rules and file a business impact analysis with your office. While the rules which are proposed to be transferred ODNR to ODA do have a business impact and potentially an environmental impact, section 709.20(C) of H.B. 64 states:

#The Director of Agriculture shall adopt rules . . . that are identical to the rules that are identified in the memorandum of understanding signed under this section except that references to the Division of Soil and Water Resources in the Department of Natural Resources shall be replaced with references to the Department of Agriculture, and references to the Chief of the Division of Soil and Water Resources in the Department of Natural Resources shall be replaced with references to the Director of Agriculture.#

With that specific statutory instruction, ODA is unable to alter, amend, or impact the rules except for the specific ways listed above. Therefore, the intent and necessity of the business impact analysis and/or an environmental impact statement is nullified by this code section. Further, the rules have only been amended to as instructed by the bill.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rules states that animal feeding operations shall prevent pollution from the flooding of animal feed operations. This is achieved by utilizing the best management practices as outlined in the rule.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not

incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

Not applicable.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Each owner, operator, or person responsible for an animal feeding operation must prevent pollution by utilizing the best management practices as outlined in the rule. The cost for compliance varies on the size of the facility and the environmental conditions present at their operation.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **No**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**



Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

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December 15, 2015

Mark Hamlin
Office of Lt. Governor Mary Taylor
77 South High Street, 30th Floor
Columbus, OH 43215-6117
Via Email Mark.Hamlin@governor.ohio.gov

Re: Soil and Water Conservation – Transfer of Administrative Rules

Dear Mr. Hamlin,

Amended Substitute House Bill No. 64 of the 131st General Assembly became effective on June 30, 2015. A highlight of the bill was the transfer of the Agricultural Soil and Water Conservation Program from Ohio Department of Natural Resources (ODNR) to the Ohio Department of Agriculture (ODA). This transfer is set to take place on January 1, 2016.

Uncodified section 709.20 of H.B. 64 outlines that ODA and ODNR are to enter into a memorandum of understanding regarding the transfer of the program. Specifically, the agreement is to identify which administrative rules are to be transferred from ODNR to ODA. The section continues to require ODA to adopt these transferred rules through the requirements of Chapter 119 of the Revised Code.

As you are well aware, Chapter 119 of the Revised Code requires the Department to examine any adverse business impacts of the proposed rules and file a business impact analysis with your office. While the rules which are proposed to be transferred ODNR to ODA do have a business impact, section 709.20(C) of H.B. 64 states:

“The Director of Agriculture shall adopt rules . . . that are identical to the rules that are identified in the memorandum of understanding signed under this section except that references to the Division of Soil and Water Resources in the Department of Natural Resources shall be replaced with references to the Department of Agriculture, and references to the Chief of the Division of Soil and Water Resources in the Department of Natural Resources shall be replaced with references to the Director of Agriculture.”

With that specific statutory instruction, ODA is unable to alter, amend, or impact the rules except for the specific ways listed above. Therefore, the intent and necessity of the business impact analysis is nullified by this code section.

Please consider this letter as a substitute for the regularly required business impact analysis. Attached please find a copy of the draft rules which have been amended pursuant to the



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requirements listed above. Should you have any questions regarding this matter please feel free to contact me at 614.728.6390 or via email at david.miran@agri.ohio.gov.

Sincerely,
OHIO DEPARTMENT OF AGRICULTURE



David E. Miran, Jr.
Senior Staff Counsel
Ohio Department of Agriculture





MEMORANDUM

TO: David Miran, Jr., Senior Staff Counsel, Ohio Department of Agriculture

FROM: Mark Hamlin, Director of Regulatory Policy

DATE: January 10, 2016

RE: **CSI Review – Soil & Water Conservation Program (OAC 901:13)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 27 new rules proposed by the Ohio Department of Agriculture, establishing a Soil & Water Conservation program at the Department. The rules were submitted in three separate packages based on the Administrative Code chapter number (901:13-1, 901:13-2, and 901:13-3), but are being considered together for the purpose of CSI review. The rules were submitted to CSI on December 15, 2015 and the comment period ran through January 7, 2016. No comments were submitted during the CSI review period.

In lieu of a Business Impact Analysis, the Department of Agriculture submitted a memo explaining the unique situation with these rules. As described in the memo, these rules represent a transfer of the state's Soil & Water Conservation program from the Department of Natural Resources to the Department of Agriculture, as mandated by recently-enacted House Bill 64. Also included in House Bill 64 was a requirement that the Department of Agriculture adopt rules that are identical to the existing rules in place at the Department of Natural Resources, with the exception of references to the department and director, as appropriate due to the statutory change. Although many of the rules in this package do impact businesses as described in ORC 107.52, the legislative requirement does not afford the Department the opportunity to review the substance of the rules

and determine whether the purpose of the regulations justifies the adverse impacts to business. As such, the CSI Office agrees that the rules are justified and should move forward, although we encourage the Department within a reasonable period of time to review the rules related to the Soil & Water Conservation program, solicit the feedback of stakeholders, and identify whether any changes to the program are warranted based on the impact to business and any other factors.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Agriculture should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.