

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:13-1-20
Rule Type: No Change
Rule Title/Tagline: Designating watersheds in distress.
Agency Name: Department of Agriculture
Division:
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I. Rule Summary

1. **Is this a five year rule review? Yes**
 - A. **What is the rule's five year review date?** 10/15/2018 and 10/15/2023
2. **Is this rule the result of recent legislation? No**
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 939.02
5. **What statute(s) does the rule implement or amplify?** 939.02
6. **What are the reasons for proposing the rule?**

The rule is up for five year rule review.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

OAC 901:13-1-20 states that the director may designate watersheds in distress. The rule outlines the factors that the director may consider in determining whether to designate watersheds as distressed.
8. **Does the rule incorporate material by reference? Yes**

9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

Pursuant to section 121.76 of the Revised Code, the code sections incorporated into this rule are exempt from compliance with sections 121.71 to 121.74 of the Revised Code.

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

There is no direct cost of compliance associated with this rule. However, should a watershed be designated as distressed by the director and later consented by a majority vote of the Ohio Soil and Water Conservation Commission individuals operating within the newly designated watersheds would face costs of compliance.

Specifically, OAC 901:13-1-19 is currently before JCARR. The costs of compliance with these OAC 901:13-1-19 varies widely based on the size, scope, and location of the operation. There are a number of operations within Ohio who already have a nutrient management plan which would satisfy this rule. These operations would not incur any additional costs due to these changes. Further, there are operations which have a number of the components of a nutrient management plan but do not fully meet the requirements of a complete plan. These operations would have reduced costs in completing their requirements under these rules.

Members of the impacted business community which operate within a watershed in distress must develop and operate in conformance with a nutrient management plan that address the methods, amount, form, placement, cropping system and timing of all nutrient applications. Operations which apply manure and are required to obtain a CNMP could expect to occur costs of \$55/hour for the development of this plan. Based on data provided to the Department by USDA NRCS, the cost of a CNMP could range from \$2,400 to \$12,100. The cost of the CNMP varies greatly and depends on the operation including size and complexity. Operations which do not apply manure would only be required to obtain a "simple" nutrient management plan. Costs for these plans on average range between \$2,500 to \$3,000 per plan, per producer. In an effort to assist the regulated community, USDA NRCS may have funds available to lower the cost of these plans. In addition, operations within a watershed in distress may be required to implement other practices such as installing filter strips onto their farmland, correcting and preventing erosion issues, and purchasing new equipment to comply with nutrient placement requirements.

The nutrient management plans must be in a form as outlined in paragraph (C) of rule 901:13-1-19. These forms include the Ohio nutrient management workbook, USDA NRCS comprehensive nutrient management plan (CNMP), or an equivalent document which has been approved by the Department. At a minimum, these plans must include soil tests, manure analysis (if applicable), planned application rates, field information, as well as other points of information outlined in rule.

Depending on the size and scope of the operations which are required to obtain a CNMP may have to install additional manure storage facilities. According to the USDA NRCS, each livestock facility on average would be expected to spend \$80,000 for these "practices" over a ten-year period.

The impacted community must comply with the Natural Resources Conservation Service (NRCS) 590 standards contained in the Field Office Technical Guide.

All operations must attest to the completion of their nutrient management plan by the deadline established by the Director. The aforementioned plans must be updated every three years as well as conditions changed. Further, after a plan update is complete, the operators must re-attest to their plan.

Operations within a watershed in distress must compete and maintain operating records as outlined in paragraph (F) of rule OAC 901:13-1-19. This requires time for compliance as well as storage capabilities for five years of records. In order to comply with recordkeeping requirements, operators must spend time for compliance. Operators may have equipment which tracks and records all the necessary data however, this type of equipment is expensive and not required. Operators can

accomplish the recordkeeping requirements manually and may store paper records or keep electronic copies.

Failure to comply with these rules may be subject to civil fines as outlined in OAC 901:13-1-99. Individuals who do commit a violation of these rules may be subject to civil fines in amounts from \$250 to \$10,000. The amount of the violation depends on the rule violated, the severity of the violation, and any history of non-compliance. Further, the quantified impact of corrective actions will depend entirely on the violation and the means to correct that violation.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **Does this rule have an adverse impact on business? Yes**
 - 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? Yes**

Individuals within a watershed in distress may face civil or criminal penalties for failing to follow the OAC 901:13-1-19.
 - C. **Does this rule require specific expenditures or the report of information as a condition of compliance? No**