

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 901:13-1-20  
**Rule Type:** Amendment  
**Rule Title/Tagline:** Designating watersheds in distress.  
**Agency Name:** Department of Agriculture  
**Division:** Soil and Water Conservation  
**Address:** 8995 E. Main St. Reynoldsburg OH 43068  
**Contact:** Renee Schmauch **Phone:** 614-728-6295  
**Email:** renee.schmauch@agri.ohio.gov

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 4/19/2024
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. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
  - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

The rules in this package are being filed in accordance with the five year rule review process.
8. **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 amendments proposed alter the structure of the rule which should allow for easier reading comprehension. Further, the rule makes stylistic changes according to the LSC rule drafting manual. The amendments do not impact the substance of the rule.

9. **Does the rule incorporate material by reference? Yes**
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Pursuant to section 121.75 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. The Field Office Technical Guide that has been incorporated into this rule may be located at [www.nrcs.usda.gov](http://www.nrcs.usda.gov).

11. **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**

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not Applicable

13. **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.

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 record keeping 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.

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**
16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

### **III. Common Sense Initiative (CSI) Questions**

17. **Was this rule filed with the Common Sense Initiative Office? Yes**
18. **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? Yes**

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 record keeping 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.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

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.

**IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**

- 19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding to this rule?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing from this rule?**

Not Applicable

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

Not Applicable

**D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable

## Rule Summary and Fiscal Analysis

### Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

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**(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes**

**Please list each contact.**

Jennifer Bowman Represents Rural Interests  
Kate Bartter Arnold Knowledge or Interest  
Etta Reed Knowledge or Interest, Chair  
Fran Buchholzer Knowledge or Interest  
David Hanselmann Represents Urban Interests  
Jerry McBride Designated by OFSWCD, Vice Chair  
Anthony Debevc Knowledge of Interest in Ag Production  
Director Ann Vogel Ex Officio, Director of Environmental Protection  
Director Mary Mertz Ex Officio, Director of Natural Resources  
Cathann Kress Ex Officio, Vice President of Agricultural Administration of OSU  
Jeff Duling Ex Officio, Officer of the Ohio Federation of SWCD  
Kirk Hines Designated Executive Secretary  
Crystal Davis Alliance for the Great Lakes  
Rob Krain Black Swamp  
Kurt Leib Capital Advocates  
Rob Eshenbaugh Capitol Advocates

Cheryl Subler CCAO  
Russ Terry Ducks Unlimited  
Keith Westrick Grand St Marys Restoration Commission  
Matt Fisher Lake Erie Foundation  
Gail Hesse National Wildlife Federation  
Chris Henney Ohio Agribusiness Assoc.  
Elizabeth Harsh Ohio Beef Council/Ohio Cattlemen's Association  
Tadd Nicholson Ohio Corn & Wheat  
Scott Higgins Ohio Dairy Producers  
Amalie Lipstreu Ohio Ecological Food and Farm Association  
Trent Dougherty Ohio Environmental Council  
Vickie Askins Ohio Environmental Stewardship Alliance  
Adam Sharp Ohio Farm Bureau  
Jack Irvin Ohio Farm Bureau  
Larry Antosh Ohio Farm Bureau  
Leah Curtis Ohio Farm Bureau  
Roger High Ohio Farm Bureau  
Tony Seegers Ohio Farm Bureau  
Joe Logan Ohio Farmers Union  
Janelle Mead Ohio Federation of Soil and Water Conservation Districts  
Kent Scarlett Ohio Municipal League  
Cheryl Day Ohio Pork Producers Council  
Jim Chakeres Ohio Poultry Association  
John Armstrong Ohio Seed Improvement Assoc  
Fran Buchholzer Ohio Soil and Water Conservation Commission  
Etta Reed Ohio Soil and Water Conservation Commission  
Jerry McBride Ohio Soil and Water Conservation Commission  
Kate Bartter Arnold Ohio Soil and Water Conservation Commission  
Jen Bowman Ohio Soil and Water Conservation Commission  
Tony Debevec Ohio Soil and Water Conservation Commission  
Brandon Kern Ohio Soybean Association  
Kirk Merritt Ohio Soybean Council  
Adam Ward Ohio State University  
Heidi Fought Ohio Township Association  
Brian Laurent Ohio Turf Association  
Larry Fletcher Ohio's Lake Erie Shores and Islands  
Kris Patterson Partners for Clean Streams  
Jim Inglis Pheasants Forever  
Adam Rissien Sierra Club, Ohio Chapter  
Jessica D'Ambrosio The Nature Conservancy  
Peggy Hall The Ohio State University  
Sandy Spang Toledo Metropolitan Area Council of Governments



Kari Gerwin Toledo Metropolitan Area Council of Governments  
Bill Stanley The Nature Conservancy  
Jessica D'Ambrosio The Nature Conservancy

- (B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes**

**Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)**

Natural Resources Conservation Service (NRCS) Conservation Practice Standard, Nutrient Management, Code 590. A copy of which may be found here: [https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1192371.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1192371.pdf) NRCS,

Field Office Technical Guide (FOTG). A copy of which may be found here: <https://efotg.sc.egov.usda.gov/>

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? No**

**Is the proposed rule or rule amendment more stringent than its federal counterpart?**  
*Not Applicable*

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**