

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

Agency Name

Division

David E Miran

Contact

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901:5-4-02

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Fertilizer Applicator Certification.**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: **SB150**General Assembly: **130**Sponsor: **Hite and Peterson**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: **905.321, 905.322**5. Statute(s) the rule, as filed, amplifies or implements: **905.321, 905.322**

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

The rules contained in this chapter are in response to the enactment of Senate Bill 150, which was signed by Governor Kasich in May of this year. Senate Bill 150 gave the Ohio Department of Agriculture (#Department#) regulatory authority over the application of fertilizer by farmers on more than fifty acres used for agricultural production. The rules drafted in this package focus on science-based practices which support responsible agriculture practices while allowing Ohio to continue to

grow its vital agriculture industry.

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:

Rule 901:5-4-02 outlines the requirements for obtaining a fertilizer certificate from the Department. The rule requires applicants for certification to do the following: complete a formal application, pay the certification fee (if applicable), and complete the education requirements as found in 901:5-4-03. The rule specifically outlines requirements for the formal application and who is to pay the certification fee.

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:

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.

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:

Not applicable.

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 decrease revenues.

\$165,000

The Ohio Department of Agriculture estimates that the installation of the fertilizer applicator certification program will see a decrease in revenues of \$165,000 on an annual basis. The Department believes that there will be 30,000 new applicants for fertilizers applicator certificates. At \$30 per application, this will amount to a gain of \$900,000 over a three year period or \$300,000 annualized. The Department's initial budgetary estimates an annual operating budget of \$465,000. When combined, Department would see a decrease in revenues of \$165,000.

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

Preliminary budget estimates are as follows:

The Ohio Department of Agriculture expects to require seven employees to administer the fertilizer applicator certification program. These positions are: 1 Pesticide/Fertilizer Supervisor, 1 Program Administrator, 3 inspectors, and 2 certification and licensing examiners. This would create an annual cost of \$385,580.

Additionally, the Department anticipates requiring \$80,000 for travel, fuel and repair costs, office supplies, and postage to effectively communicate and inspect the

expected 44,000 fertilizer applicators in the state.

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:

Rule 901:5-4-02 outlines the requirements for obtaining a fertilizer certificate from the Department. The rule requires applicants for certification to do the following: complete a formal application, pay the certification fee (if applicable), and complete the education requirements as found in 901:5-4-03. The rule specifically outlines requirements for the formal application and who is to pay the certification fee. This requires time for compliance. Individuals must pay an application fee for certification. Individuals who have either a private or a commercial pesticide applicator license are exempt from the fee requirement. All others must pay the \$30 application fee.

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? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

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? **Yes**

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? **Yes**

This rule requires that individuals applying fertilizer for the purposes of agricultural production obtain a fertilizer certificate from the Department of Agriculture. This requirement can be found in chapter 905 of the Revised Code.

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? **Yes**

As required in section 905.322 of the Revised Code, each applicant for a fertilizer certificate must complete a formal application and pay a \$30 registration fee.

Environmental Rule Adoption/Amendment Form

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.

Abbruzzese, Chris Ohio EPA

Abele, Jerry Lake Erie Charter Boat Association

Adkins, Matt ODNR SWR

Aichele, Nathan ODA

Alvey, Ken Lake Erie Marine Trades Assoc

Amin, Dr. Mohammed ODA

Anderson, Tony Farmer/County Commissioner

Antosch, Larry Ohio Farm Bureau

Arnold, Glen OSU Extension

Ashworth, David Novozymes BioAg, Inc.

Bailey, Mike ODA

Baker, Dr. David Heidelberg University

Bankey, Mindy OFSWCD

Baumgardner, Gene Ohio Corn & Wheat Growers

Beal, Matt ODA

Beiler, Joe VanTilburg Farms

Benner, Steve S & D Application

Berning, Tim Ohio CCA Board

Black, Rocky ODA Bray, Kellie CropLifeAmerica

Breece, Dr. Donald OSU - Extension

Broering, Paul ODPa

Brookes, Cindy Sandusky River Watershed Coalition

Brown, Ed Crop Production Services

Brown, Larry OSU - Food, Ag & Bio Eng.

Burkett, Frank Ohio Farm Bureau

Busdeker, Douglas The Andersons, Inc.

Byrum, Dr. Bev ODA

Chakeres, Jim Ohio Poultry Association

Chapman, Karen Environmental Defense Fund

Cobb, Glen ODNR

Coleman, Jennifer Ohio Soybean Council

Coulon, Chris USDA Cross, Brenna Blue Stone Solutions, Ltd.

Cross, Diane Blue Stone Solutions, Ltd.

Cross, Ed Blue Stone Solutions, Ltd.

Davis, Bret Ohio Soybean Association
Davis, Steve NRCS
Dayton, Libby OSU-SENR
Dudley, Dan Ohio EPA
Elder, Kevin ODA
Fausey, Norm USDA-ARS
Fontana, Tom Ohio Soybean Council
Forshey, Dr. Tony ODA, Interim Director
Gates, Brett ODA
Gates, Daryl Morral Companies
Gebhardt, Karl ODNR -DSWR
Gibson, Russ OEPA - Surface Water
Graham, Adam Ohio Soybean Council
Grimes, John OSU Extension
Hammon, Fred ODNR - DSWR
Harsh, Elizabeth Ohio Cattlemen's Assoc.
Hendrick, Ron OSU
Henney, Chris Ohio AgriBusiness Association
Hess, Carl Farm Credit Services
Hesse, Gail Ohio Lake Erie Commission
Higgins, Scott Ohio Dairy Producers Association
High, Roger Ohio Sheep Improvement Association
Hines, Kirk ODNR-DSWR
Homan, Eugene OSGMP
Hoorman, Jim OSUE - Mercer

Hostetler, Brent Ohio Corn & Wheat Growers

Irvin, Jack Ohio Corn & Wheat Growers

Isler, Dick Ohio Pork Producers J

ones, Belinda OPARR

Jones, Laura ODNR

Keller, Steve Morral Companies

Kessler, John ODNR - DSWR

King, Kevin USDA-ARS

Knapke, William Ohio Pork Producers

Koehler, Brandi Ohio FSA State Office

LaBarge, Greg OSU Extension

Linebaugh, Neal DFA Mideast

Logan, Joe The Ohio Environmental Council

Lohstroh, Michelle USDA-NRCS

Lozier, Ted ODNR

Lust, Tina Certified Crop Advisors

McClure, Terry Ohio Soybean Council

McCoy, Denise ODNR

McDevitt, Steve NRCS

Mead, Janelle ODA

Menke, Tom Menke Consulting

Merritt, Kirk Ohio Soybean Council

Moore, Richard OSU-SENRC

Morris, James Ohio Water Science Center

Moser, Dr. Bobby OSU

Motter, John Ohio Soybean Council
Nally, Scott Ohio EPA, Director
Nicholson, Tadd Ohio Corn and Wheat Growers
Pennell, Gary Farmers Elevator Grain & Supply
Phelps, Frank Farmer/County Commissioner
Pitchford, Erica ODA Rausch, Jon OSU Extension
Renner, Nick Mercer County SWCD
Reutter, Dr. Jeff OSU-Sea Grant and Stone Laboratory
Richards, Dr. R. Peter Heidelberg University
Ricker, Dale OSU Extension
Rockhold, Ronald Ohio Corn & Wheat Growers
Russell, Dave Brownfield Ag Network
Sasson, Anthony The Nature Conservancy
Scarpitti, Mark USDA NRCS
Schmidt, Stacy The Andersons, Inc.
Schrimpf, Paul Croplife Magazine
Schwartz, Dan Ohio Soybean Council
Sharp, Adam Ohio Farm Bureau
Shearer, Scott OSU Shimp, Fred ODNR
Sloan, Dale CAA Board - Channel Bio
Smith, Mark NRCS
Stanley, Bill The Nature Conservancy
Stark, John The Nature Conservancy
Stimpert, Keith Ohio Farm Bureau
Strait, David Mercer Landmark

Stuckey, Kent OFSWCD

Sunderman, Mark Deshler Farms

Sundermeier, Lee Morral Companies

Sutton, Don OPARR/Ohio Turfgrass Foundation

Swartz, Kris OFSWCD

Swartz, Nate CCA Board

Unger, Rick Lake Erie Charter Boat Association

Vollmer-Sanders, Carrie The Nature Conservancy

Ward, Adam Ohio Soybean Council

Ward, Andy OSU

Ware, Andy ODNR

Watters, Harold OSU Extension

Weaver, Chris Bridgewater Dairy

White, David Ohio Livestock Coalition

Wible, Chris Scotts-OPARR

Wilson, Mark Land Stewards, LLC

Wilson, Rick Ohio EPA

Wise, Howard ODA

Wise, Roger Ohio Farmers Union

Witter, Jon OSU Wyss, Ronald Hardin County

Zehringer, James

(Director) ODNR

Zody, Scott ODNR

(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.)

The Department of Agriculture with the help of the Department of Natural Resources and the Ohio Environmental Protection Agency created a working group to study the impact of agricultural nutrients on water quality. The results of this group impacted the proposed rules. The study can be found here:
http://www.agri.ohio.gov/topnews/waterquality/docs/FINAL_REPORT_03-09-12.pdf

- (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? **Yes**

Please explain why?

The proposed rules are slightly more stringent than the statute's created in Senate Bill 150. Namely, the proposed rules create additional record keeping requirements. The statute specifically grants the Department of Agriculture the authority to create additional record keeping requirements.